

REPORTS OF CASES
DETERMINED
IN THE
COURT OF NIZAMUT ADAWLUT,
FOR 1854.
WITH AN INDEX
VOL. IV. PART I.

CALCUTTA:
THACKER, SPINK AND CO.,
W. THACKER AND CO., LONDON,
THACKER AND CO., FORBES' STREET, BOMBAY.
1854.

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- I. *Convictions.* | II. *Acquittals.*

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I. *Convictions.*II. *Acquittals.*1. *Convictions.*

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C A S E S

IN THE

N I Z A M U T A D A W L U T.

PRESENT: .
SIR R. BARLOW, BART.
AND
A. J. M. MILLS, Esq., *Judges.*

GOVERNMENT,

versus

MUSSUMAT PEETAI (No. 1), AND BHURRUT
KANDEE (No. 2.)

Cuttack.

CRIME CHARGED.—No. 1, Wilful murder of her newly born male infant. No. 2, accessory thereto after the fact.

1854.

Committing Officer.—Mr. E. Drummond, magistrate of the southern division of Cuttack.

January 2.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 8th November 1853.

Case of
MUSSUMAT
PEETAI and
another.

Remarks by the sessions judge :—On Monday afternoon the 16th Bhadoon 1260, corresponding with the 30th August 1853, when Madhub Pudhan, witness No. 10, was going to cut grass he descried the body of a newly born male infant lying in some water, along side of a hedge formed of *Keora* or coarse thorny grass, contiguous to the "*goolab pookree*" in *mouza* Kelaro. and gave information to Monee Raotha, the *surburakar* of the village, who set enquiry on foot to ascertain whose child it was, and also communicated intelligence of its having been discovered to the police. And Mussumat Peetai being suspected in consequence of her absence from the village, though it is stated it was not before known that she was pregnant, was sent for, and though, on her first appearance, she denied having been delivered of the child, she the following morning (Wednesday) acknowledged that she had given birth to it; and observing that the child was born

A woman
convicted of
the wilful
murder of her
newly born
infant and
sentenced ca-
pitally; ano-
ther prisoner,
convicted as
an accessory
after the fact,
sentenced to
seven years'
imprisonment.

1854.

January 2.

Case of
Mussumat
Peetai and
another.

alive, she, as she had been previously instructed to do by the mother of Bhurrut Kandee, prisoner No. 2, the father of the child, squeezed its throat and killed it; and that afterwards the said Bhurrut and his brother Bhobanee Kandee came and took the child to throw it away.

Bhurrut Kandee, the prisoner No. 2, acknowledged having got Mussumat Peetai with child and having, at her solicitation, along with his brother Bhobanee, thrown the child away after its birth, after having been told by Peetai that she had killed it.

Mussumat Peetai in her confessions states that Mussumat Gilce, witness No. 12, wife of Bhobanee Kandee, was present at the time she was delivered, but the witness while she admits she slept the early part of the night of the occurrence at Peetai's house, denies that she was present at her delivery, or that she was aware she was pregnant, and states only that as she was returning from Peetai's to her own house, she heard a noise or cry, which sounded like the voice of Peetai's son Bheekarry.

The confessions, however, of the prisoners both before the police and the magistrate are proved, by the subscribing witnesses, to have been voluntarily made.

Before this court Mussumat Peetai stated that the answer she made before the police mohurrir was not with the record; that she was beat by four burkundazes, who told her to say that she killed the child and that she would be released, also that Bhurrut Kandee got her with child in Phalagoon, and on two occasions gave medicine which caused her miscarriage, when she gave birth to a dead child, and that Bhurrut Kandee and his brother Bhobanee threw it away.

Bhurrut Kandee pleaded "*not guilty*," and likewise stated that the answer made by him before the police mohurrir was not with the record. And he denied throwing away the body or knowing who threw it away.

The futwa of the Law Officer declares the crimes charged against both prisoners; but states kissas to be barred in consequence of the prisoner No. 2, being the father of the child, and in the above conviction I concur. With reference to the circumstances of the case and the extreme ignorance of the parties, on which account alone it would appear that the magistrate abstained from committing Bhobanee Kandee, the brother of Bhurrut Kandee, I beg to recommend that Peetai be sentenced to imprisonment for life and Bhurrut Kandee to seven years' imprisonment.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. A. J. M. Mills).—*Mr. A. J. M. Mills.*—I see no reason to question the genuineness of the confessions, which are proved to have been voluntarily made by the prisoner, Mussumat Peetai. In them she admits that she took medicine to procure abortion; that it did procure it; that the child was born alive and that she squeezed its throat and killed it. She is clearly guilty of a

deliberate murder. It is not a sufficient reason for mitigation of punishment that the parties are extremely ignorant. In Cuttack, especially, where the offence of murdering new born children, the fruits of illicit intercourse, or exposing them with the intent to destroy them, is prevalent, such a plea should not be admitted. In a similar case, see pages 199 and 200, Volume 1 of this Court's decisions for 1852, a Cuttack case also, the prisoner was sentenced capitally, and I deem it my duty to propose that Mussumat Pectai should suffer death.

I concur in the conviction of Bhurrut Kandee, on his own well attested confessions, of accessoryship after the fact, and would, sentence him, as proposed by the sessions judge, to seven years, imprisonment with labor and in irons.

Sir R. Barlow.—The prisoner No. 1, confessed before the magistrate that she took certain medicine to bring on a premature labor, by suggestion of the mother of prisoner No. 2; she succeeded, and gave birth to a living child of seven months, which, she confesses, she killed by squeezing its neck—She further, on being questioned, acknowledged that she was aware she was committing the crime of murder. I concur in passing capital sentence on the prisoner. I also concur in sentencing prisoner No. 2, as proposed.

1854.

January 2.

Case of
MUSSUMAT
PECTAI and
another.

CASES IN THE NIZAMUT ADAWLUT.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT, KERAMUT HUSSUN AND MUSSUMAT LUROOWUN,

versus

MUNGUN (No. 53), HURROO (No. 54), KEHUR (No. 55), KHEDUN (No. 56), DHUTHOOREE (No. 57), UMMER (No. 58), DUMMER (No. 59), DOOKHUN (No. 60), LEELAH (No. 61), RUGGOO (No. 62), DUMREE (No. 63), POKER (No. 64), MULLICK SUNAH (No. 65), AND GHOGUN (No. 66).

Bhagulpore.

1854.

January 5.

Case of MUNGUN and others.

Conviction and sentence passed by the sessions judge in a case of dacoity upheld, except as regards two prisoners acquitted. Order for restitution under Act 16 of 1850, quashed, the value and extent of the property taken not having been ascertained.

CRIME CHARGED.—Dacoity and plunder of property valued at rupees 745-4.

CRIME ESTABLISHED.—Dacoity and plunder of property valued at rupees 745-4.

Committing Officer.—Mr. W. T. Tucker, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhagulpore, on the 4th August, 1853.

Remarks by the sessions judge.—The prisoners all plead “not guilty.”

This case of dacoity occurred at the village of Duhma, distant from the thannah of Tarapore about five coss, on the night of the 10th of April.

On the 11th Mussumat Luroowun, widow of Zoolfkar Khan Soobadar, whose house had been robbed, complained at the thannah and gave in a *taleeka* of the property stolen valued at 745 rupees, this list is without date, but the evidence stating that the *taleeka* was given at the same time is dated the 11th April. There is no witness to the fact properly so called, but Hussun No., 4, saw the light of the *mussals* from a distance and heard the noise, and says there were about twenty-five men who remained about an hour. Mussumat Luroowun does not appear at this court to give an account of the nature of the attack on her house; the account given by her in the *mofussil* was, that she was sleeping in her house when at about 11 at night, ten or twelve men came with *latees* and *tulwars* and lights of rolled cloth, and wax candles, and robbed the house of jewels and clothes and a gun. They remained an hour; none of the neighbours came to her assistance; the robbers came from the east and returned to the east. She said she distinctly recognized Peeroo and Juchoo and Jhubboo and Dahoo and Bubooa and Munoo and Man Khan of mouza Keraee Inglis, and Burkoo and Chutkoo and Bhundoo of Khurruckpore. She further states that Burkoo

and Chutkoo are married to her husband's (Zoolfkar Khan Soobadar) daughters by a first marriage, and once before were imprisoned for robbing her.

In the fouzdar's court Mussumat Luroowun states, that when the dacoits came into her house they began to beat and maltreat her, when she broke through a *tattee* and escaped. That the dacoits collected all her clothes on a *charpoy*, and then placed fire under it and burnt it. That she sent notice to the thannah, and the darogah came and found out the dacoits. That those found out by the darogah are the real men who committed the dacoity. That those first named by him, were only suspected as the most likely to do such a thing. She identified Mullick Sunah as one of the dacoits and also Mullick Munnoo as one who had struck her with a *lattee*. She also recognized all the other prisoners; except Dumree, Duthooree and Dummer and Kehur as concerned in the dacoity.

The 3 first witnesses entered in the calendar, Nos. 1, 2 and 3, as those to the fact, depose to Mullick Sunah having come to invite them and many others, to assist at a dacoity in Zoolf Kar's house; that they refused to go, but heard that all the prisoners were concerned.

The prisoner Mangun, No. 53, Hurroo, No. 54, Kehur, No. 55, Khedun, No. 56, Dhutonee, No. 57, Ummmer, No. 58, Dummer, No. 59, Dookhun, No. 60, Leelah, No. 61, Ruggoo, No. 62, Dumree, No. 63, and Poker, No. 64, confessed in the mofussil and before the magistrate to be more or less concerned in the dacoity. Mullick Sunah, No. 65, and Ghogun, No. 66, confessed in the mofussil only, but their confessions, as well as those before the magistrate, are all duly authenticated on oath before this court, the prisoners denying their former confessions, account for those in the mofussil by accusing the darogah of maltreatment and threats of *be-izzuting* their women, and say that those before the magistrate were copied from the mofussil ones without their consent.

They call 43 witnesses to defence and character, most of whom either deny all knowledge of the prisoners calling them, or declare them *budmash*.

The jury bring in a verdict of guilty against the prisoners, from Nos. 53 to 66 inclusive, in which I concur.

There is no doubt of the occurrence of the dacoity. The old woman, in whose house it was committed was too much frightened to know whom she accused, and naturally enough, in the first instance, laid the blame on her own relatives, who had, it seems, once before robbed her. Subsequently, however, she identified most of the prisoners as those concerned in the dacoity; those she omitted, and others, have been convicted on their own confessions; twelve, Nos. 53 to 64 inclusive, confessed both in mofussil and before the magistrate; Nos. 65 and 66 confessed at the

1854.

January 5.

Case of
MUNGUN and
others.

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Mungun and
others.

thannah; they are, from Nos. 53 to 66 inclusive, convicted of dacoity, but without any aggravating circumstances, neither are they as far as I can learn, professional dacoits; they are sentenced to seven years' imprisonment with labor in irons.

The four prisoners Nos. 67, 68, 69 and 70 are acquitted, there being no sufficient proof against them.

Sentence passed by the lower court, Nos. 53 to 66, each to seven (7) years' imprisonment with labor and irons, and under Act 16 of 1850 to pay jointly and severally a fine of 350 rupees, as compensation for the loss sustained by Mussumat Luroowun prosecutrix.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes). The evidence of Mussumat Luroowun before the police and the magistrate, has been excluded from consideration by me, as she neither appeared at the trial to tender her evidence, or accounted for her absence. I have therefore found no direct evidence to the fact on the part of the prosecution, the confessions of the prisoners themselves constitute in fact the sole evidence against them.

The prisoners 53 to 64, confessed before the police, and repeated their confessions to the magistrate; Nos. 53 and 54 also admitted having received some part of the stolen property, which was recovered from them. They pleaded in defence that their confessions had been extorted, but they never withdrew them in the presence of the magistrate, although 65 and 66 did so, thereby showing that no real impediment prevented the others from doing the same.

Against the prisoners Nos. 65 and 66, there is nothing but their mofussil admissions, in that of the former, not even admitting any participation in the robbery.

I acquit these two prisoners Nos. 65 and 66, and uphold the conviction and sentence passed upon the others by the sessions judge, but as the value and extent of the property taken, is not ascertained, and the prosecutrix has not been examined at the trial, I quash that part of the sentence, awarding full restitution from the property of the prisoners under Act 16 of 1850.

PRESENT :

J. DUNBAR, Esq., *Judge.*

Hooghly.

GOVERNMENT,

1854.

versus

NEAMUTOOLLA ALIAS NEEMYE NEEKAREE.

January 5.

Case of
NEAMUTOOL-
LA *alias* NEE-
MYE NEEKA-
REE.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Seekur Roy, deputy magistrate under the commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly on the 22nd December, 1853.

Remarks by the officiating additional sessions judge.—The prisoner was committed by the deputy magistrate, under the commissioner for the suppression of dacoity, under the provisions of Act XXIV. 1843, and is charged with having belonged to a gang of dacoits.

The evidence of an approver witness convicts the prisoner of having been concerned in three dacoities, and the statement of his plea of guilty, recorded before the committing officer on the 5th October, 1853, and proved in this Court, sets forth that he has been associated with several gangs of dacoits and committed thirteen dacoities, under the leadership of their respective *sirdars*.

The prisoners detailed confession before the commissioner for the suppression of dacoity, embraces forty-six dacoities, proof of the occurrence of the major part of which has been furnished by the magistrates, in whose jurisdictions the affairs took place. There is no cause to doubt either the truth or voluntariness of these confessions.

The prisoner repeats his plea of guilty before this court, and convicting him of the crime charged, I recommend that he be sentenced to transportation for life with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar). The prisoner is mentioned in the original confession of his approver, and confesses to having been engaged with him in one dacoity, the details of which, as given by both, correspond; apart from this, his confession to no fewer than forty-six dacoities, is fully attested, and the actual occurrence of the greater portion of these is established.

Concurring in the conviction, the court sentence the prisoner to transportation for life with labor in irons.

Prisoner convicted of having belonged to a gang of dacoits on his own confession to 46 dacoities, and sentenced to transportation for life.

PRESENT:

J. DUNBAR, Esq., *Judge*.

Hooghly.

1854.

GOVERNMENT,

January 5.

versus

Case of
MODHOO-
ROODUN BAG-
DEE.

MODHOOSOODUN BAGDEE ALIAS TIPKATA MODHOO
BAGDEE.

Prisoner
convicted of
having belong-
ed to a gang
of dacoits, and
sentenced to
transportation
for life.

CRIME CHARGED.—Having belonged to a gang of dacoits.
Committing Officer.—Mr. E. Jackson, commissioner for the
suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions
judge of Hooghly, on the 22nd December, 1853.

Remarks by the officiating additional sessions judge.—The
prisoner was committed by the commissioner for the suppression
of dacoity, under the provisions of Act XXIV. 1843, and is
charged with having belonged to a gang of dacoits.

The evidence of an approver witness convicts the prisoner of
having been concerned in four dacoities, and the statement, of
his plea of guilty recorded before the committing officer on the
24th September, 1853, and proved in this court, sets forth that
he has been associated with six gangs of dacoits, and committed
seventeen dacoities under their respective leaders. That record
also shows that he has followed the profession of dacoits for the
space of twelve or fourteen years.

The prisoner's detailed confession before the commissioner for
the suppression of dacoity, embraces twenty-seven dacoities, proof
of the occurrence of the major part of which has been furnished
by the magistrates, in whose jurisdictions the affairs took place.
There is no cause to doubt either the truth or voluntariness of
these confessions.

The prisoner repeats his plea of guilty before this court, and
convicting him of the crime charged, I recommend that he be
sentenced to transportation for life with labor in irons.

Remarks by the Nizamut Adawlut.—(Present Mr. J. Dunbar).
The prisoner is named in the original confession of his approver ;
the testimony of the latter now upon oath, supported as it is, by
the circumstantial evidence referred to by the sessions judge, and
by the plea of guilty, recorded by the prisoner himself, fully
establishes the charge.

The sentence of the court is, that the prisoner be imprisoned
for life in transportation beyond sea.

PRESENT :

J. DUNBAR, Esq., *Judge*.

GOVERNMENT,

versus

RAMA MOOCHEE.

Hooghly.

1854.

January 5.
Case of
RAMA Moo-
CHEE.

Prisoner
convicted of
having belong-
ed to a gang
of dacoits, and
sentenced to
transportation
for life.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Sekur Roy, deputy magistrate under the commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 22nd December, 1853.

Remarks by the officiating additional sessions judge.—The prisoner was committed by the deputy magistrate, under the commissioner for the suppression of dacoity, under the provisions of Act XXIV. 1843, and is charged with having belonged to a gang of dacoits.

The evidence of an approver witness convicts the prisoner of having been concerned in ten dacoities, and the statements of his plea of guilt, recorded before the committing officer on the 6th October 1853, and proved in this court, sets forth that he has been associated with two gangs and committed eight dacoities with them. That record also shows that he has followed the profession of dacoit for about five years.

The prisoner's detailed confession, before the commissioner for the suppression of dacoity, embraces fifteen dacoities, proof of the occurrence of the whole of which, with one exception, has been furnished by the magistrates in whose jurisdictions the affairs took place. There is no cause to doubt either the truth or voluntariness of these confessions.

The prisoner repeats his plea of guilty before this court, and convicting him of the crime, I recommend that he be sentenced to transportation for life with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar).—The details of ten dacoities, as given by the approver, correspond in all essential particulars with the statement of the prisoner. The proof is complete. The court sentence the prisoner to be imprisoned for life, with labor in irons, in transportation beyond sea.

PRESENT:

H. T. RAIKES, Esq., Judge.

NURENDERLOLL AND GOVERNMENT,

versus

JHUMMUN (No. 34), RAJUN (No. 35), NUZUR ULLEE (No. 36), IMUN (No. 37), BHEEKUN (No. 38), GHUMUNDEE (No. 39), GENDOUREE (No. 40), BUNNOO (No. 41), SADOOLLAH (No. 42), AND MOKHTAR SING (No. 43).

Bhagulpore.

1854.

January 6.

Case of
JHUMMUN and
others.

Four pri-
soners con-
victed of bur-
glary and sen-
tenced by the
sessions judge
to five years'
imprisonment,
with a fine of
100 Rs. under
Act XVI. of
1850. Six
others convict-
ed as receivers
of stolen prop-
erty, and sen-
tenced to three
years' impri-
sonment by
the sessions
judge.
Appeal re-
jected.

CRIME CHARGED.—Nos. 34 to 37, burglary and theft of property valued at Rupees 231; Nos. 37 to 43, having in their possession stolen property knowing, at the time, the same to have been obtained by the above burglary and theft.

CRIME ESTABLISHED.—Nos. 34 to 37, burglary and theft of property valued at Rupees 231; Nos. 38 to 43, having in their possession stolen property knowing, at the time, the same to have been obtained by the above burglary and theft.

Committing Officer.—Mr. W. T. Tucker, magistrate of Mon-
ghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bha-
gulpore on the 4th August, 1853.

Remarks by the sessions judge.—Jhummun and Rajun and
Imun and Bunnoo plead guilty, the rest not guilty.

Jhummun and Rajun prisoners, Nos. 34 and 35, were appre-
hended on suspicion, having been heard of as selling some of the
stolen property to Ghumundee, No. 39; Jhummun and Rajun
confessed and implicated the others, two of whom Nos. 36 and 37,
as well as Jhummun and Rajun confessed both in the mofussil
and before the magistrate; Jhummun, Rajun and Bunnoo confess
before this court to the charges against them in the calendar;
Ghumundee also acknowledges having bought the stolen property,
one embroidered cap, but denies knowing that it was stolen; wit-
nesses, 1, 10, 11 and 12 speak respectively to the finding of the
stolen property in the houses of prisoners Nos. 37, 38, 39, 40,
41, 42, 43, and identify the same as the property of *Sheodyal*, the
property consists of fine muslin clothes, caps and shawls, about
the *bonâ fide* identification of which, there cannot be the least
doubt.

Witnesses, Nos. 8 and 9, depose to the confession before the
magistrate of prisoner Nuzur Ullee No. 36, the only one of those
confessing previously, who denies here.

The prisoners not confessing before this court, make the fol-
lowing defence.

Nuzur Ullee simply denies both the crime and his former con-

fessions, Bheekun says that one Hussein Ullee Kulal left the things in his house.

Ghumundec No. 39, that Gunnoo witness No. 1, pawned to him the cap found in his house, for six pice, promising to redeem it in three days.

Gendouree No. 40, knows nothing about the *chapkan* and *kuba* found in his house.

Sadoollah No. 42, denies that the things produced in court were found in his house.

Mokhtar Sing, in whose house the *shawls* were found, says they were not found in his house but in that of Sheochurn Sing, a relative of his, who was not at home.

Four witnesses to defence, produced by prisoners Nos. 38 and 41, speak to their character being previously good.

The jury bring in a verdict of guilty against all the prisoners, on the counts charged against them in the calendar, in which I concur.

The results of this trial need no comment, confession and discovery, of easily identified stolen property on their premises, convicts all the prisoners; Nos. 34 to 37, are convicted of burglary and theft and sentenced to five years' imprisonment with labor in irons, and fine of 100 rupees under Act XVI. of 1850; Nos. 38 to 43 of receiving stolen property, knowing it to be stolen, and sentenced to three years' imprisonment with labor in irons. Some slight irregularity in the form used by his darogah, in taking confessions in the mofussil, has been pointed out to the magistrate.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoners have urged nothing in their petition of appeal. I find all the facts detailed by the sessions judge are fully established against the prisoners, by the evidence on record. I, therefore, see no reason to doubt the propriety of the conviction, and confirm the sentence passed upon the prisoners.

1854.

January 6.
Case of
JHUMMUN and
others.

PRESENT:

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND A. WALLACE, Esq.,

versus

Bhagulpore. MUSSUMAT JUNOOBUN (No. 2), AND WARIS ALLEE
 1854. (No. 3 APPELLANT.),

January 6. CRIME CHARGED.—Theft of silver race cups valued at Rupees 1000.

Case of CRIME ESTABLISHED.—Theft of silver race cups valued at
 WARIS ALEE Rupees 1000
 and another. Committing Officer.—Mr. W. T. Tucker, magistrate of Mon-

Two prisoners convicted of robbing the master of one of them, and sentenced by the sessions judge to five years' imprisonment with a fine of 200 Rs. under Act XVI. of 1850. In appeal, one prisoner acquitted.

ghyr. Tried before Mr. R. N. Farquharson, sessions judge of Bhagulpore, on the 3rd August, 1853.

Remarks by the sessions judge.—This is a case of theft, by servants, of their master's property, a pair of silver race cups valued at 1000 Rupees.

Junooobun, prisoner No. 2, a christian Ayah in Mr. Wallace's service confessed to have stolen the box in which they were kept locked up, and to have given it to Waris Allee, prisoner No. 3, with whom she had an intrigue; the box was discovered broken open and empty early one morning, within a hundred yards of the house. The cups were discovered during the same day hidden beneath some oats, heaped in a bungalow in the compound. The tops of the cups which Mr. Wallace values alone at 200 rupees had been wrenched off, and have not been found, the door of the bungalow in which the oats were kept appears to have been without lock or other fastening.

One witness, Buxoo No. 12, who was in the first instance suspected of being concerned in the theft, deposes to Junooobun having come late at night into the kitchen, where the men were all sleeping and that she awoke Waris Allee, and took him out with her towards the dining room, the entrance to which is closely adjoining the kitchen door.

Junooobun makes no defence, Waris Allee denies the facts urged against him, and says he has been accused without cause.

The jury bring in a verdict of guilty against both the prisoners in which I concur.

There is no doubt that both the prisoners were concerned in this theft, and though the confession of one prisoner cannot be accepted as conclusive against another, it must here have its due weight, as directed against her own paramour and confirmed by the evidence of a fellow-servant, as to the fact of Junooobun having called out Waris Allee late at night, and of his having

gone with her to the neighbourhood, of where she states she gave him the box containing the stolen property, and close to which the box was found at day-break the next morning, robbed of its contents. This breakage could not have been effected by the woman herself, nor would she have had sufficient motive to commit the robbery, solely for her own benefit. I convict them both, of the theft of the property charged against them, and sentence Waris Allee to imprisonment with labor in irons for five years, and Junoobun to five years' imprisonment with labor suited to her sex, with a fine of 200 rupees jointly and severally under Act XVI. of 1850.

Junoobun is a christian girl of some seventeen or eighteen years old, and has been brought up from childhood in Mr. Wallace's house. It is a great pity to see a young christian girl sent to a jail, where her only society will be Hindoo and Mahomedan women of depraved character; there is no help for it, however, and I have no other course to suggest, there being no female penitentiary I believe, even in Calcutta, to which she could be sent to work out her time of imprisonment.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes). The woman is clearly guilty, she has not appealed; but the only evidence against Waris Allee, who has appealed, is the statement of Buxoo, that the girl came to the kitchen on the night of the theft and called Waris Allee away.

Buxoo, however, was himself suspected, and when in custody made no mention of this fact, neither is it corroborated by the girl herself in her confessions. The evidence against Waris Allee is, in my opinion, too weak to warrant a conviction, and I therefore acquit him.

1854.

January 6.
Case of
WARIS ALLEE
and another.

PRESENT :

J. DUNBAR, Esq., *Judge*.

GOVERNMENT,

versus

East Burdwan. SHAIKH ASEERUDDEEN (No. 1), DERASUTOOLLAH
 1854. MUNDUL (No. 2), JOORUN SHAIKH (No. 3), MOO-
 JIBOOLLAH CHOWDHRY (No. 4), AND ROOHOOL-
 LAH SHAIKH (No. 5).

January 6.

Case of
 SHAIKH ASEERUDDEEN
 and others.

CRIME CHARGED.—1st count, riot with the culpable homicide of Balgovind sepoy; 2nd count, aiding and abetting in the above crime.

CRIME ESTABLISHED.—Prisoners Nos. 1, 2, 3 and 4, aiding and abetting in a riot attended with the culpable homicide of Balgovind sepoy. Prisoner No. 5, riot with the culpable homicide of Balgovind sepoy.

Committing Officer.—Moulovee Gholam Ushruff, deputy magistrate of Bood Bood, zillah East Burdwan.

Tried before Mr. J. H. Patton, officiating additional sessions judge of East Burdwan, on the 8th November, 1853.

Remarks by the officiating additional sessions judge.—Some commissariat elephants and a guard of sepahis were detached on special duty, in this district, under the orders of the officers in charge of the Damooda embankments. It is invariably the case, in such instances, frequent quarrels and disputes had taken place between the elephant-drivers and the village people, about the supply of branches of trees required for the food of the animals. With the view of checking this evil, the local authorities at the works, not discreetly I think, used to depute sepahis to accompany the elephants on these expeditions for fodder, and it was on one of these occasions that the occurrence, which forms the subject of this trial, took place. A party of four sepahis and seven mahouts had so gone forth. The former proceeded into the village, with the view of consulting with the headmen as to the supply required, and left the latter with their elephants a short distance off. While waiting for the required authority to cut the branches, the sepahis were upbraided by some of the villagers with having directed the dispoiling of their trees, the mahouts having during their absence taken on themselves to procure the necessary supply unknown to them. They repelled the charge and an altercation ensued. Seeing that there was every probability of a breach of the peace they moved off, but were followed by the villagers with imprecations and threats. As they retreated, a general assault was made on them, by a large body of men armed with clubs and they were beaten. During the mêlé one

One prisoner convicted of riot with culpable homicide, and four others of aiding and abetting in the same. The prisoners were villagers, who attacked the sepoys, sent out to guard the Government elephant-drivers in collecting fodder for the elephants. Sentence passed by the sessions judge confirmed.

of their comrades received a blow on the head, which knocked him down senseless. He subsequently died from the effects of the injury, as stated by the assistant and sub-assistant surgeons in their examination. The blow was inflicted by the prisoner Roohoolah Shaikh, at the bidding of the prisoners Shaikh Asceruddeen and Derasutoollah, who ordered the attack and the prisoners Joorun Shaikh and Moojiboollah Chowdhry were present at the riot, and aided and abetted in the outrage. The evidence on the trial criminales those parties, but the record of the committing officer shows that the mahouts had ill-treated the villagers, on former occasions, and cut their trees without making compensation for the loss thus entailed. Some allowance, therefore, must be made for the irritated feelings of the peasantry, when their rights were again wantonly and unjustly invaded, and it is this consideration that has made me pass the lenient sentence I have done on the prisoners. *Alibi* is the only defence set up by the prisoners, and though their witnesses prove it in general terms, the shortness of the distance between their alleged whereabouts, and the spot where the riot took place (something less than three miles) render it inoperative as an exculpatory plea.

Sentence passed by the lower court. Prisoners Nos. 1 and 2 to be imprisoned for two (2) years, and prisoners Nos. 3 and 4, for one (1) year, and prisoner No. 5 for three (3) years, all without irons, and to pay a fine of thirty (30) rupees each within twenty days, or in default of payment, to labor until the fine be paid, or the term of their sentences expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar). It is certain that the sepoy ought not to have accompanied the mahouts, and I think there can be no doubt that something in their conduct must have occurred, to try the temper of the villagers severely, and to drive them to extremities. That an assault was made and one man killed is beyond question, and the evidence establishes the fact that the whole of the prisoners were, more or less, actively engaged. I concur with the sessions judge in thinking that, under all the circumstances, no very heavy measurement of punishment was called for.

The sentence is confirmed.

1854.

January 6.

Case of
SHAikh As-
SEERUDEEN
and others.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

MEHAR ULEE KHAN AND GOVERNMENT,

versus

Bhagulpore. KUMLOO (No. 40), TORUL (No. 41), HEDAYET ULLEE (No. 42), BHUTTOO KHAN (No. 43), SOOKKAN (No. 44), MOONDA ALIAS NUTHA (No. 45) AND BHUTTOO KULAUL (No. 46).

1854.

January 6.

Case of
KUMLOO and
others.

Six prisoners
convicted of
burglary, and
another pri-
soner of re-
ceiving the sto-
len goods, sen-
tenced by the
sessions judge
to five years'
imprisonment,
and to pay a
fine of 173-2-
9. Appeal re-
jected.

CRIME CHARGED.—Nos. 40 to 45, 1st count, burglary and theft of property valued at Company's rupees 183-11-3; 2nd count, having in their possession stolen property knowing, at the time, the same to have been obtained by burglary and theft; No. 46, having in his possession stolen property knowing, at the time, the same to have been obtained by burglary and theft.

CRIME ESTABLISHED.—Nos. 40 to 45, burglary and theft of property valued at Company's rupees 183-11-3; No. 46, having in his possession stolen property, knowing, at the time, the same to have been obtained by burglary and theft.

Committing Officer.—Mr. W. T. Tucker, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhagulpore, on the 29th October, 1853.

Remarks by the sessions judge.—The prisoner pleads “not guilty.”

Mehar Ulee prosecutor was awoke by the *chowkeedar*, Assa, witness No. 4, telling him that a burglary had been made in his house, and that the thieves were still in the premises; he immediately went out and saw some of the prisoners running away, but they lingered, while others of their party were disembarassing themselves from the holes in the wall, they had made for entry. During this time, prosecutor calling out, several neighbours, witnesses Nos. 1, 2, and 3, had joined him, and they all pursued but were beaten off and distanced by the thieves, whom they all however distinctly recognise. Assa *chowkeedar* gave notice to the police on the 7th, the morning after the robbery, accusing Torul and Sookhun of being present as seen by him on the spot, and on same day Bhuttoo and Kumloo and Hedayet were apprehended on suspicion, but owing to prosecutor not having given in his written complaint, further steps were not taken till the 10th of August, when Torul, Sookhun and Moonda were apprehended. Witnesses 1, 2, 3 and 4, swear distinctly to having seen prisoners, 40 to 45 inclusive, on the spot on the night of the burglary and making off with bundles of property, and, knowing them well before, to have recognized them notwithstanding the darkness. They say that when they pursued the

prisoners, they turned round to attack them, and that they saw their features plainly.

The property found is fully identified, the greater part was found in the house of Bhuttoo, a receiver of stolen goods, by profession a *kulaul* or liquor seller; Nos. 1 to 17, were found on his premises Nos. 12 to 17, were not included in the original list of property given in by prosecutor, but this is accounted for, and they are all distinctly sworn to by prosecutor and his witnesses Nos. 1, 2, 3 and 4.

The prisoners, in their defence, deny all knowledge of the robbery, and state that the articles produced in court as stolen and found on their several premises and persons are their own, and bring witnesses to the same; the witnesses of all, except of No. 46, either know nothing of the prisoners calling on them, or say that they are bad characters. The witnesses of No. 46, Nos. 18, 19, 21 and 22, depose to the clothes and brass utensils being the property of prisoner.

The jury bring in a verdict of guilty against all the prisoners, on the charges entered in the calendar, in which I concur, against prisoners 40 to 45, for burglary and theft of property valued at 183-11-3, and against No. 46, for having in his possession stolen property knowing it to be stolen.

I sentence prisoners Kumloo No. 40, Torul No. 41, Hedayet No. 42, Bhuttoo Khan No. 43, Sookhun No. 44, Moonda No. 45, and Bhuttoo No. 46, to five years' imprisonment with labor in irons and fine jointly and severally to the amount of 173-2-9, under Act XVI. of 1850, as shown in the statement above.

There is no doubt of the guilt of all the prisoners; with regard to the six first, the evidence of the eye-witnesses is quite undisturbed by any thing they have to urge in their defence. The conviction rests more on this evidence, than on the property found in their houses and on their persons; their characters are notoriously bad; with regard to No. 46, convicted of receiving the stolen goods knowing them to be stolen, I consider the evidence for the prosecution more credible and consistent, than that advanced by the witnesses for the defence; that on both sides is nearly balanced, but aided by an intelligent jury and carefully considering all the circumstances of the case, I have preferred relying on that for the prosecution.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes). This case calls for no particular remarks. The prisoners were recognised and property afterwards discovered in their possession, one of them being convicted as receiver only. I uphold the conviction.

1854.

January 6.

Case of
KUMLOO and
others.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND MUSSUMAT JEEREEAH,

versus

MOHESH.

Tirhoot,

1854.

January 7.

Case of

МОНКШ.

Prisoner convicted of committing rape on a child of tender age and sentenced, according to the recommendation of the sessions judge to three years' imprisonment.

CRIME CHARGED.—Rape.

Committing Officer.—Mr. F. A. Glover, joint magistrate of Chumparun.

Tried before Mr. R. Forbes, sessions judge of Tirhoot, on the 3rd December, 1853.

Remarks by the sessions judge.—I refer this trial for the orders of the superior court, because as the *fatwa* of my law officer, with which I concur, convicts the prisoner of the crime of rape, the final order is by Cl. 2, Sec. 6, Reg. XVII. 1817, beyond the legal competence of this court. The case being prosecuted jointly by Government and the ravished Mussumat Jeereeah, a child of about seven years of age, the circumstances of the case, as elicited from the record and evidence are these:—

It appears that Mussumat Jeereeah was living in *mouzah* Burdeha, in the house of Peerbux (witness No. 9), who had brought her from her father's house, in another village, with the intention of marrying her to his son. The prisoner too a youth of about sixteen years of age was residing in his father's house in the same *mouzah*, he too having been betrothed in marriage, but not having as yet cohabited with his intended wife.

As Mussumat Jeereeah was of too tender an age to understand the nature of an oath, she was not, conformably to the Circular Order on the subject, examined at all in this court. In the Foujdarree, however, her deposition had been taken without oath, and she stated that on the day of the occurrence which led to this trial, and which was the 26th Bhadoon 1260, F. S. or 13th September last, she had gone out to watch the makye field (of Peerbux) when the prisoner, who was also so employed in a field close by, came and laying hold of her, threw her down on the ground and violated her person, and her intended father-in-law, Peerbux, with whom she was living, and who having been a deponent by way of prosecutor in the Foujdarree, was made a witness in the case, deposed that Mussumat Jeereeah having gone out about 9 A. M. to keep watch in the makye field, returned home crying about four in the afternoon and complained to him that the prisoner, having thrown her down on the ground, forcibly had connexion with her, and the witness observed that her clothes were stained with blood; that on this he (the witness) immediately called his neighbours (witnesses Nos. 10, 11, and 12)

to come and see the state in which the child was, who on their arrival were informed by the witness Peer Bux of what the child had told him, one of them stating that he noticed the blood on the child's clothes at the time, and the other two the next day at the thannah.

Mr. Durant, the sub-assistant surgeon stationed at Mooteharee, having examined the child Jeerceah, with a view to ascertain the extent of injury she had suffered, reported in his letter to the joint-magistrate, of the 19th September, to the following effect: "I examined a young girl this morning about ten years of age, named Jeerceah, for a reported rape having been committed on her about fifteen days ago (agreeable to her statement) and beg to state that I found considerable marks of violence on the genitals, viz. in the complete laceration of the pudendum and the brushing of the other soft parts, which were also much swollen, affording ample evidence of the charge of rape having been committed on the prosecutrix."

Two midwives (witnesses Nos. 1 and 2), residents of Burdeha, who had been sent for by the *darogah* to examine the private parts of the child, deposed to their finding that a laceration had been made, extending about as much as a barley corn, the parts being inflamed, and the child's clothes were stained with blood.

Both at the thannah, and before the joint-magistrate, the prisoner voluntarily confessed,—his confession being in both instances attested,—that he had had criminal connexion with Mussunnat Jeerceah, but not by force, as she had asked him to embrace her. In this court also the prisoner pleaded guilty, his defence being that the girl who, he said, had once before solicited him but he had refused to have connexion with her, had on the present occasion invited him to give her half a pice, and have connexion with her which he had done. He had no witnesses to call.

The law officer's *futwa* finding the prisoner guilty of the crime of rape, but declaring the legal punishment by "*hudd*" barred, owing to the ravished child being, from her tender age, incapable of carnal desire, declares the prisoner liable to discretionary punishment by "*tazeer*."

It is to be regretted that instead of simply recording the usual written report or letter from the sub-assistant surgeon, who examined Mussunnat Jeerceah, the joint-magistrate did not take the evidence of that officer on oath, and the more so as Mr. Durant being absent on leave, when the case came on for trial, his evidence could not be obtained and recorded in this court. It will be seen that the sub-assistant surgeon has stated the age of Mussunnat Jeerceah, whom he examined, to be about ten years of age. In the thanadar's report, however, she is said to be seven, and her intended father-in-law states her age to be five or six years of age, while the appearance of the child plainly indi-

1854.

January 7.

Case of
MONESH.

1854.

January 7.

Case of
Монкеш.

cates her to be not more, at most, than seven years old. Although, too, the sub-assistant surgeon concludes his letter to the joint-magistrate by stating, as the result of his examination of the child, that it afforded "ample evidence of the charge of rape having been committed on the prosecutrix," he has not distinctly given his opinion whether the offence was completed or not. It has, however, been ruled by the Nizamut Adawlut in the case of Mukhroo, versus Jadoo, page 215 of vol. III. Part III. of Reports for 1829, that completion of the crime of rape is not necessary to consequent punishment.

I have expressed my acquiescence in the verdict of my law officer, which finds the prisoner guilty of the crime of rape, being fully convinced that the prisoner forcibly had connexion with Mussumat Jeereeah, and his defensive plea of his having carnally known the girl with her own consent has not been at all substantiated. Under any circumstances the consent of one so young would be immaterial. Adverting to the youth of the prisoner, whose deportment and expressions in this court seemed to indicate great penitence or shame, for the act which led to his being brought to trial, and referring to the final order in the case of Kullooa, page 147 of vol. III of Nizamut Adawlut Reports, and to other precedents of the superior court in similar cases, I would recommend the prisoner's being sentenced to imprisonment with labor and irons for three years.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin). I consider the charge of rape to be proved against the prisoner, whose defence, that he had connexion with the girl with her consent, even if true, does not, on account of her youth, exculpate him, but I hold it likely to be untrue, with reference to her age. I sentence the prisoner, as proposed by the sessions judge, to imprisonment with labor and irons for three years.

The joint-magistrate's attention should be drawn to Circular Order No. 42, dated 27th March, 1840.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

HARAN PORAL BAGDEE,

versus

NAUPHOR BAGDEE (No. 1), AND GOPAL BAGDEE
(No. 2 APPELLANT).

Hooghly.

1854.

CRIME CHARGED.—Committing dacoity in the house of the prosecutor, and plundering therefrom property to the value of rupees 12, 6 annas.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 26th October, 1853.

January 7.

Case of
GOPAL BAG-
DEE and ano-
ther.

Remarks by the officiating additional sessions judge.—This dacoity was committed by the working gangs on the line of the railroad under construction. Some ten or twelve of the coolies entered the house of the prosecutor, which has no surrounding wall, and while four of them held him down, the rest began to strip his wife of the ornaments she wore. On this the prosecutor cried out and shouted for help which alarmed the dacoits, and they presently left the premises. The *chowkeedar* of the quarter was attracted to the spot, by the cries of the prosecutor, and arrived in time to arrest the prisoner Nauphor Bagdee, just as he was quitting the house. He struck him with a *lattee* and felled him to the ground, and found on his person a brass *lota* and a torch. The only goods the dacoits succeeded in carrying off were the ornaments the prosecutor's wife had on her person, amounting in value to about 12 Rs. On being taken before the *darogah*, the prisoner Nauphor confessed the crime, and on his confession the prisoner Gopal Bagdee and others were apprehended. Gopal also admitted his participation in the dacoity, and named the same associates as his co-prisoner. Some of these appear to have been arrested and released by the magistrates. Both prisoners made confessions before the magistrate, and by them stood convicted of the charge. Before this court they deny the crime, and affirm that their *mofussil* confessions were extorted, and that they made none before the magistrate, but they name no witnesses to their defence. This is a dacoity in a very mild form, and I have regulated the punishment accordingly.

The prison-
er's appeal,
on the ground
of his confes-
sions being ex-
torted or in-
duced, reject-
ed.

Sentence passed by the lower court.—Imprisonment with labor and irons for (8) eight years.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin). The appellant's (Gopal Bagdee's) plea in appeal, that he was forced to confess before the *darogah* by ill-treatment, and that he was induced to confess before the magistrate by the hope of release held out to him by the *darogah*, is not in any way substantiated. The appeal is rejected, and the sentence, passed by the officiating additional sessions judge, is confirmed.

PRESENT :

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND MUSSUMAT BILLIA,

versus

RAMNATH KANDOO.

Sarun.

1854.

January 7.

Case of

RAMNATH
KANDOO.

CRIME CHARGED.—1st count, murder of an infant female child; 2nd count, exposing an infant female child in a grass jungle with intent to destroy life.

CRIME ESTABLISHED.—Exposing an infant with intent to destroy its life.

Committing Officer.—Mr. W. F. McDonell, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 29th September, 1853.

Prisoner convicted of exposing his illegitimate child with intent to destroy it, and sentenced to seven years' imprisonment. The court observed that the prisoner should have been convicted on the charge of wilful murder.

Remarks by the sessions judge.—The particulars of this case are shortly as follow. A woman named Billia having cohabited with the prisoner, bore him a female child, which, however, he refused to maintain, and the consequence was that the mother had to keep it. Having, however, to work for her own livelihood, and finding the child troublesome, she took it one night and placed it (some other persons witnessing it) on the bed upon which the prisoner was sleeping, and left it there, and the following day the child was found in some grass jungle with its throat cut. It was taken up and brought into the station, but died eventually from the injuries sustained, and the above facts being known, the prisoner was apprehended, when he admitted that he had thrown away the child though he denied having cut the throat. There is no proof whatever that he did this (though I think that there can be little doubt on the subject,) but he admits himself on his trial that he threw away the child, his only excuse being that it was *not* his. It is quite certain that he threw away the child, and it could only have been with the intention of destroying its life that he did so. Under these circumstances, and as the moulvly also convicts him of this crime, I have convicted and sentenced him for it, as noted in the preceding column.

Sentence passed by the lower court. To be imprisoned with labor and irons for a period of (7) seven years.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes). There is, in my opinion, quite sufficient here to warrant a very reasonable presumption, that the prisoner made a direct attempt on the life of the infant by cutting its throat. Had the sessions judge therefore convicted on the graver charge, and referred the case to be disposed of by the Court, he would, I think, have exercised a better discretion than he has done.

As the case is now merely before me in appeal, I can do no more than confirm the sentence.

PRESENT :

A. DICK, Esq., *Judge*.

GOVERNMENT AND ENAYAT KHAN,

versus

PUDDO RAUR.

24 Pergunnahs

CRIME CHARGED.—1st count, wilful murder of Luffoo Jaun (a girl of eight or nine years of age) for the sake of her ornaments (value Company's rupees 42-10 annas); 2nd count, having in her possession a gold nose-ring, value rupees 2-10, knowing it to have been acquired by the wilful murder of Luffoo Jaun.

1854.

January 7.

Case of
PUDDO RAUR.

Committing Officer.—Mr. Edward Jenkins, magistrate of Howrah.

Prisoner convicted as an accomplice in the wilful murder of a child, for the sake of its ornaments, and sentenced to imprisonment for life.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Purgunnahs, on the 12th December, 1853.

Remarks by the officiating additional sessions judge.—The prisoner is charged with the wilful murder of the prosecutor's daughter, Luffoo Jaun, a girl about nine years old, for the sake of her ornaments, valued at Rs. 42-8, in the first count, and with having in possession a gold nose-ring, value Rs. 2-10, knowing it to have been acquired by the murder of the girl Luffoo Jaun in the second. The prisoner pleads not guilty to both counts of the indictment.

The evidence of the prosecutor and the witnesses, enumerated in the margin,* proves that the prisoner came to the house of the former on the day of the murder and took away the girl Luffoo Jaun, on pretence of giving her a picture she had promised; that Luffoo Jaun had on her person a pair of silver anklets, a pair of silver bangles, a pair of silver armlets, a pair of silver bracelets, a silver necklace, a silver waist chain and a gold nose-ring, when she left her father's house, and that her lifeless body was found a few hours afterwards, lying in a ditch at a short distance from the prisoner's house, stripped of all the ornaments she wore.

After enticing the girl away from her father's house, the prisoner took her to her own abode, where two men named severally Meizudin and Jilabdin, sat at the door awaiting her arrival.

* Witnesses Nos. 44, 15.

This fact will be proved by the testimony of the witnesses noted in the margin.†

† Witnesses Nos. 17, 18.

The evidence of the civil surgeon‡ will show that the body, of the deceased Luffoo Jaun, exhibited traces of extensive and severe bruises in the muscles of the throat, and that death was caused by violent pressure on that

‡ Witness No. 3.

1854. part. No appearances were observed indicating that the neck had been broken.

January 7. The remainder of the witnesses examined on the trial (as per
 PUDDO RAUR. * Witnesses Nos. margin)* prove the record of the *suruthal*, or
 4, 6, 7, 8, 9, 11, 12. inquest held on the body of the deceased by
 the *darogah*, the confession of the prisoner
 both before the police and the magistrate, the finding of the gold
 nose-ring worn by the deceased on the day of the murder in the
 house of the prisoner, and the identity of the ornament.

The prisoner's confessions implicate the two persons said to have been sitting at her door, when she brought the deceased to her house, namely, Meizudin and Jilabdin. She states that she decoyed the girl away from her home, at their bidding, and that they murdered her in her (prisoner's) house; that the man Jilabdin removed the body, and threw it into the ditch where it was found, and took away the ornaments tied up in a cloth. She further alleges that Meizudin promised to dispose of the body after night fall, and went away and that after the departure of the two men, she found the nose-ring in the room where the murder had been committed and hid it under her mattress. Her confessions are consistent throughout with this slight difference, that before the magistrate, she affirmed that she heard the girl's groans and on attempting to enter the room found the door barred.

The prisoner's defence before this court is, that she was desired by the prosecutor to give evidence in a case in which the man Meizudin was concerned, and sent for that purpose in charge of Munirudin *burkundaz* and one Puran Mussulman to the magistrate's court, and that in her examination before that officer, she stated what these men had tutored her to say. This statement she makes with reference to her confessions, both of which she repudiates.

The *futwa* of the law officer acquits the prisoner of the wilful murder of the girl Luffoo Jaun, for the sake of her ornaments, but convicts her of complicity in the crime, privity thereto, and receiving and having in her possession a gold nose-ring knowing it to have been acquired thereby, and declares her liable to discretionary punishment by "*akoobut*."

I concur in the finding, and convicting the prisoner Puddo Raur of being a principal in the second degree, in the murder of the deceased Luffoo Jaun, for the sake of her ornaments, and receiving and having in possession a gold nose-ring, the property of the deceased, knowing it to have been acquired by murder, recommend that she be sentenced to imprisonment for life with labor suited to her sex. Her confessions and the evidence recorded on the trial are conclusive of her guilt, which, in my mind, would have assumed a deeper dye, did not my suspicions strongly rest on the persons implicated in the prisoner's confessions, Meizudin

and Jilabdin, as the actual perpetrators of the murder. The deed itself and the removal of the body were acts, under the circumstances, not easily effected by a woman, single-handed.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. Dick.) The court concur with the sessions judge in convicting the prisoner, as a principal in the 2nd degree, and sentence her, as he recommends, to imprisonment for life, with labor suited to her sex.

The court observe, that several of the prisoner's witnesses are reported simply as absent. This is not sufficient or satisfactory, in such cases especially, when the life itself of the prisoner is at stake. The report should be more in detail such as, when the witnesses left their homes, whither gone, and for what purpose, so as to satisfy the court that every exertion has really been made to insure the attendance of the witnesses for the defence.

The court further request, that the sessions judge will direct the attention of the magistrate, towards keeping alive in the minds of the inhabitants, through the police, the Circular Orders passed in regard to warning parents and relatives against letting out their children from home, with ornaments on their persons.

1854.

January 7.

Case of
PUDDO RAUR.

PRESENT:

J. DUNBAR, Esq., *Judge*.

GOVERNMENT AND OTHERS,

Bhagulpore.

versus

KUNYEAH SINGH.

1854.

January 7. **CRIME CHARGED.**—1st count, wilful murder of Nirput Singh ;
Case of 2nd count, accessary before and after the murder of Nirput Singh ;
KUNYEAH 3rd count, riot in which Nirput Singh was killed and Inderjeet
SINGH. Singh, Burhma Roy, Thummun Roy and Jobraj Singh were
severely wounded.

CRIME ESTABLISHED.—Riot in which Nirput Singh was killed
and Inderjeet, Burhma Roy, Thummun Roy and Jobraj Singh
were severely wounded.

Committing Officer.—Mr. W. T. Tucker, magistrate of Mon-
ghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhagul-
pore, on the 2nd August, 1853.

Remarks by the sessions judge.—This prisoner belongs to a
case tried by me on the 21st, 22nd and 23rd April last. It was
one of affray with homicide, in which the three principals were
sentenced by the Nizamut to fourteen years, and nineteen others
to seven years' imprisonment. The witnesses appearing against
the prisoner were all included in the former calendar ; their de-
positions have been taken, anew, and the prisoner duly identified
by them as concerned in the affray in question.

Prisoner in his defence pleads an *alibi*, and produces two wit-
nesses in support of the same, but I see no reason, with reference
to the former statements, the flight of prisoner from his village,
and the clear evidence of the present witnesses, to credit their
story in preference to that inculcating Kunyeh, in the crime of
which Hurdial and others are now undergoing punishment.

The jury bring in a verdict of guilty on the 3rd count, in
accordance with the ruling of the superior court in the former
case, in which I concur, and sentence Kunyeh, prisoner, to seven
years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dun-
bar.)—

Baboo Chundernath Deb appeared for the prisoner.

Baboo Sumbhoonath pundit for Government.

The record shows that the prisoner was named as having been
present and having taken a part in the riot, by a number of wit-
nesses, in the course of the first investigation ; he has now been
satisfactorily identified. I see no reason to interfere and confirm
the sentence.

PRESENT :

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND RAZEH MAHOMED SIRDAR,

versus

JHOLE SHEIKH.

Rungpore.

CRIME CHARGED.—1st count, sodomy upon the person of Baboorollah, the son of the prosecutor, and 2d count, with indecent assault upon Baboorollah, the son of the prosecutor.

CRIME ESTABLISHED.—Sodomy.

Committing Officer.—Mr. R. H. Russell, officiating joint magistrate of Bograh.

Tried before Mr. W. Bell, sessions judge of Rungpore on the 8th October, 1853.

Remarks by the sessions judge.—The prosecutor alleges that the witnesses 1 and 2 brought the child, his son, a boy of some three or four years old, to him, stating that the prisoner had attempted to commit an unnatural crime upon him. On examining the child he found him hurt, but no bleeding from the parts.

Witnesses 1 and 2 are clear and consistent in their story, as eye-witnesses to the act before the *jumadar*, the joint magistrate, and the sessions court, and the general account is borne out by the other witnesses.

The prisoner, a heavy unprepossessing looking person of about twenty, denies, but offers no evidence in his favour.

The law officer convicts and I agree sentencing accordingly.

Sentence passed by the lower court.—Imprisonment with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoner in his appeal alleges that there is enmity between himself and the prosecutor, regarding a relation of his whom the prosecutor had defrauded of her wages, and which led to an assault on the prisoner, and in order to forestall his complaint in that matter, the present accusation was brought against him. Not a word of this assault was stated in his former defence, and as the offence charged is proved, I see no reason to doubt the propriety of the conviction; the appeal is rejected.

1854.

January 7.

Case of
JHOLE
SHEIKH.

Prisoner convicted of sodomy on a child of 4 years old and sentenced to seven years' imprisonment.

PRESENT :

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND BEERBUL SHEIKH,

versus

BENGAI SHEIKH.

Rungpore.

1854.

January 7.

Case of
BENGAI
SHEIKH.

Prisoner convicted of burglary and sentenced to 5 years' imprisonment. In appeal the sentence reduced to two years. Held that a previous conviction of homicide does not compel a magistrate to commit a prisoner otherwise punishable by himself. The law, cl. 2, sec. 2, Reg. XII. of 1818, refers only to offences against property.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor and stealing therefrom property valued at Co.'s Rs. 7-11-5, and 2nd count, having in his possession property acquired by the said burglary knowing it to have been so obtained.

CRIME ESTABLISHED.—Burglary.

Committing Officer.—Mr. R. H. Russell, officiating joint magistrate of Bograh.

Tried before Mr. W. Bell, sessions judge of Rungpore, on the 8th October, 1853.

Remarks by the sessions judge.—From the deposition of the prosecutor and evidence of the witnesses, it is shewn that on the night of the occurrence, the people in the house were roused by the screams of the prosecutor's mother, who said some one had taken off her neck ornament, and that she had felt his hand; the prosecutor then got up and arrested the prisoner with the property, and near the hole which he had cut, were found two *thaltees*, a *lotah* and a *cutoorah*, placed conveniently for taking away.

The prisoner confessed. He also confessed before the *jumadar*, but denied before the magistrate, and pleaded not guilty before the sessions court, and says he owed the prosecutor money, and therefore he seized him and trumped up the case against him; he calls no witnesses.

The law officer convicts and I agree.

Sentence passed by the lower court—Imprisonment with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut, (Present: Mr. H. T. Raikes.) The prisoner was charged with committing a burglary and stealing property to the value of Rs. 7-11-5, and one of the grounds of commitment is stated by the magistrate to be, that the prisoner had been previously convicted and sentenced on a charge of culpable homicide (killing his wife); he was therefore committed to the sessions on the present charge under Clause 2, Section 2, Regulation XII. of 1818.

The sessions judge has likewise sentenced the prisoner, on the same grounds, to imprisonment for five years.

I concur with the sessions judge in deeming the prisoner guilty of the burglary, as there is no reason to doubt the credibility of the evidence, which proves the capture of the prisoner in the very

act of committing the crime, but a previous conviction for homicide does not, in my opinion, require the magistrate to commit in a case punishable by himself, nor does it justify any enhancement of punishment.

The law quoted, (Regulation 12 of 1818,) to my perception, only refers to offences against *property* and does not include, under the term "before convicted," &c., a conviction for offences of a class and nature entirely different from those for the punishment of which the regulation provides.

I would therefore reduce the sentence passed by the sessions judge to two years, but as it will be more satisfactory to the judge to have the opinion of the court at large on the view of the law I have adopted, I beg to refer the point for the opinion of my colleagues.

Mr. A. Dick.—I concur entirely with Mr. Raikes.

Mr. J. Dunbar.—So do I.

Mr. B. J. Colvin.—Ditto.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

LUKHEEKANT CHUCKERBUTTEE AND
GOVERNMENT,

versus

PANAH NUSHOO.

Rungpore.

1854.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, and plundering therefrom property, valued at Co.'s Rs. 45-15, and 2nd count, having in his possession property acquired by the said dacoity, knowing it to have been so obtained.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. R. H. Russell, officiating joint magistrate of Bograh.

Tried before Mr. W. Bell, sessions judge of Rungpore, on the 8th October, 1853.

Remarks by the sessions judge.—This was a simple case of dacoity. The prosecutor and his witnesses prove that his house was broken into on the 20th of *Bhadoon*, 4th September, and the prisoner was clearly recognized by the prosecutor and two witnesses, who at the *thannah*, magistrate's *cutcherry*, and my court adhered to the same statement. The property found in the prisoner's house is recognized by several witnesses. In his defence the prisoner, who has throughout denied his guilt, pleads that the property found is partly his and he knows nothing of the cloth, and that he was at home that night; he utterly fails in

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January 7.

Case of
BENGAL
SHEIKH.

January 7.

Case of
PANAH NUSHOO.

Prisoner convicted of dacoity and sentenced to ten years' imprisonment. Appeal rejected.

1854. establishing any thing he attempts; the *chowkeedar* states he answered when he called him at 10 o'clock, but he knows nothing after, and his three connections, whom he called to recognize the property, all declare they do not know it. His house being only half a mile from prosecutor's, it is possible he might be at home at ten and yet assist at the dacoity after midnight. I see not the slightest reason for discrediting the clear evidence of the prosecutor and his eye witnesses, who are consistent throughout, and sentence accordingly.

January 7.

Case of
PANAH NUS-
SHOO.

I tried the case under Act 24 of 1843.

Sentence passed by the lower court.—Imprisonment with labor and irons for ten (10) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) The prisoner urges in his appeal, that he was at one time in the prosecutor's service and refused to give evidence in his favor, in support of a forged bond; on this account, the present charge has been brought against him. Nothing of this was said before, and the magistrate states that he could discover no cause of enmity, on the part of the prosecutor, to induce the suspicion of foul play on his part. The prisoner must have been well known to the inmates of the house, and he was recognized among the dacoits. The property found in his house, though of trifling value, is also identified, and the prisoner has been unable to establish any thing in his defence. I uphold the sentence passed upon him.

PRESENT :

SIR R. BARLOW, BART, *Judge*.

GOVERNMENT AND ISHAN CHUNDER SHA, PRAMANICK, ON THE PART OF MANICK CHUNDER AND CHUNDER MOHUN SHA,

versus

ISSUR CHUNDER DOSS (No. 10,) CALLA CHAND DOSS (No. 11,) RAMANUND DOSS (No. 12,) SEFAITHOOLLAH (No. 13,) DOORGA CHURN SING (No. 14,) BUD-DUN CHUNDER DOSS (No. 15,) ISSUR CHUNDER DOSS SON OF GOURMOHUN DOSS, (No. 16,) PUD-DOLOCHUN SEN (No. 17,) BUDDUN CHUNDER DOSS (No. 18,) MOHUN DOSS (No. 20,) JOY CHUNDER SEN (No. 22,) NEEL COMUL ADITTO (No. 25,) SURROOP CHUNDER DOSS (No. 26,) AND RAMJOY BONEEK (No. 27.)

Dacca,

1854.

CRIME CHARGED.—Prisoners Nos. 10 to 25, 1st count, belonging to a gang of dacoits; 2nd count, dacoity on the hired boat of the master of Ishan Chunder Sha Pramanick, plaintiff, and plundering therefrom property to the value of Rs. 1,631-3-3, and 3rd count, receiving and possessing portions of property knowing them to have been acquired in the above dacoity. Prisoner No. 26 in the above 1st and 2nd counts, and prisoner No. 27 in the above 3rd count.

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Case of
ISSUR CHUN-
DER DOSS and
others.

CRIME ESTABLISHED.—Prisoners Nos. 10 to 26. Dacoity on the boat of the prosecutor's master, and prisoner No. 27, receiving and possessing plundered property, knowing it to have been acquired by a dacoity.

Thirteen pri-
soners convict-
ed of dacoity
on a boat, and
another of re-
ceiving the
property so ac-
quired and sen-
tenced the for-
mer, to seven
years' and the
latter to five
years' impri-
sonment. In
appeal the sen-
tence on nine
prisoners up-
held, and the
others acquit-
ted.

Committing Officer.—Mr. F. B. Mactier, joint magistrate of Furrceedpore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Dacca, on the 21st July, 1853.

Remarks by the officiating sessions judge.—The prisoners are charged with this dacoity under the following circumstances. A boat laden with some bales of cotton thread, pieces of Nynesoockh cloth, and musquito curtains, belonging to Chunder Mohun, Manick Chunder and other merchants, left Calcutta about the middle of Maugh last in charge of Ishan Chunder Shah gomashta, and Govind Singh churrundar, for Serajgunge. The prisoners, who had about this time started on a predatory excursion in two fast pulling *dinghies* and a boat of larger dimensions, got scent of this boat at Khooksha in zillah Pubna on the Garooee river, and on the night of the 29th of the same month, made an attempt to steal some of the goods from it. This proving unsuccessful, they followed it for the two next days until it *lagowed*, on the evening of the 2nd Phalgun last, corresponding with the 12th February,

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DER DOSS and
others.

1853, between Aparā Roynuggur and Sohobutpore on the Ganges, towards the north of this district. The prisoners' boats came to at some distance up stream from their intended victim and, a little before midnight, leaving their large boat in charge of one or two of their comrades, the dacoits started about 17 in number, each with a paddle, in the two *dinghies*. When they came near the merchants' boat, one of their number, declared by three of the confessing prisoners to be Issur Chunder Doss the prisoner No. 10, landed, undid the fastenings from the shore, when with a *dinghie* on either side they floated it into midstream. They then boarded her, which first disturbed the inmates, four of whom finding themselves assailed on all sides jumped into the water, and swam ashore. The dacoits, after beating those who showed their faces, plundered 5 bales of thread and upwards, some bundles of cloth, musquito curtains, umbrellas, a *gharoo*, *pator*, &c. and 14 rupees from the waist of a boat man, Nimie, and made their way back to their own boat, pulled up the Ganges day and night and then down the Garooee river, &c. to their own neighbourhood in the Thauns of Bosna and Moxoodpore. Then they disposed of the greater part of their booty to Ramjoy Boneek, prisoner No. 27. The parties in charge of the merchants' boat receiving no encouragement from the *chowkeedar* of the place, thought it the best plan to hurry on to Sirajgunge with the remnant of their goods, and this accounts for delay of six days in giving information at the *thannah* of Beylgachee, to the *darogah* of which place I alone attribute any blame in regard to the wrong designation of the offence, which was called 'theft' in the first instance. After information of the robbery was given, the *darogah* of Beylgachee, assisted by the *darogah* of Moxoodpore, instituted enquiries, and from information regarding their absence from their villages at the time of the dacoity, their recent liquidation of debts and other suspicious circumstances, which was obtained, the prisoners were seized on dates varying from the 14th to the 31st March. They all confessed implicating each other in their confessions, their houses were searched, and in them or in their persons portions of the plundered property was found, or produced by them from other places or parties and they were forwarded to the magistrate. Supplementary lists of some of the plundered property were given in, during the progress of the *mofussil* enquiry. The omission of these articles from the first list can be accounted for, without suspicion of a sinister design, by the fact that they belonged to the boatmen or *gomashta*, &c., or to the merchants Mudosudun and Suroop, whereas Govind Singh, the first informant at the *thannah*, had been hurried off by the merchants Manick Chunder, Chunder Mohun with a list only of their lost goods, which were by far the most considerable. The value of the whole of the plundered property is stated at Rs. 1,631-7-3. I would remark here, as

some of the prisoners have objected to the lengthened surveillance to which they were subjected by the police, before transmission to the magistrate, that the dates of apprehension above given are those on which from time to time they were brought before the *darogah*, or on which he could proceed to search their respective houses, or take their confessions. They were actually placed in duress on earlier dates by the subordinate police deputed by the *darogah* for the purpose; but this from the numerous villages and distances at which the prisoners resided was not easily, if at all, avoidable, and there is nothing to show that such detention was intended to subserve an improper object. The confession in every instance seems to have been voluntary and such as is capable of belief, bearing internal signs of being genuine; and though, as will generally be the case, some of the prisoners allege they were extorted; on very careful enquiry I have found nothing to lead me to suppose that such was really the case. Nine (9) out of the fourteen (14) prisoners confirm their *mofussil* confessions before the joint-magistrate. The most of them are proved to have been absent from their villages, for many days before and after the date of this dacoity. In the houses of some and on the persons of others, with one solitary exception, the plundered property is found, or they gave it up, or its sale proceeds. The recovered property is sworn to by the *gomashta*, the *churrundar* and boatmen as belonging to the merchants and themselves. Their defence is in no way borne out; in some instances overthrown by their own witnesses. That of the receiver of the plundered goods, alleging innocent purchase from the prisoners No. 10 and No. 12, is altogether unworthy of belief, and the prisoners have been convicted and sentenced by me as described in column 12. I have brought Act XVI. 1850, to bear on the receiver, in the hope that the order may have a salutary effect on this class of offenders.

Sentence passed by the lower court. Prisoners Nos. 10 to 26, each to be imprisoned with labor and irons for seven (7) years; and prisoner No. 27, to be imprisoned with labor and irons for five (5) years and to pay a fine of seven hundred (700) Rs. under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Sir Robert Barlow, Baronet).—This dacoity is alleged to have been committed on the 2nd *Phalgun*, 1259, or 12th February, 1853, on board the boat of Mohun Chunder and Chunder Mohun Shah. Gobind Singh, witness No. 1, was the *churrundar* in charge, the other witnesses 2 to 6, were the boatmen and the *manjee* of the boat. No one was recognized at the time, and no traces of the offender or of the property were discovered till the 13th March, when two persons Ram Chand Dutt and Hur Chunder Nundee appeared before the *darogahs*, Shib Chunder and Omakant, who stated, they had heard that certain individuals, naming about ten of the

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prisoners, were suspicious characters and had been absent from their homes before and after the dacoity, and suggested that their houses should be searched; these were surrounded; search was then made and property, chiefly new cloths and bundles of thread, new mosquito curtains, some brass utensils and 3 black cloth *chattahs*, were found in the possession of some of the prisoners. The first clue to the discovery of the offenders and property is to be found in the statement of Hur Chunder Nundee and Ramchand Dutt, above alluded to, who in general terms suggested that the prisoners were bad characters and suspicious persons; and in that of Nobokishen Shikdar, who seeing several men on board a boat suspected them and overheard them quarrelling about the sale of some property, and disputing about their shares. He threatened, he says, prisoner No. 10, who told him all and he again gave information to the police.

The whole of this story is most unsatisfactory, and the finding of property in various places, some distance apart, five weeks after the dacoity, is equally unaccountable. Ten of the prisoners* Nos. 11, 12, 13, 14, 17, 18, 20, 22, 25, 26. others also before the magistrate; their several confessions are verified, though there has been some difficulty in following the evidence, each witness having been examined as to the integrity of the confessions he attested at various times, and the depositions having been recorded in various parts of the record.

I cannot place any reliance on the evidence for the prosecution, except to the extent of its furnishing proof against the prisoners, so far as they may have implicated themselves.

Prisoner No. 11, in the *mofussil* gave full details of the dacoity and of his receipt of plundered property. Before the magistrate he admitted he accompanied the dacoits for some distance, but withdrew afterwards.

No. 12, in the *mofussil* made a clear confession of dacoity. Before the magistrate he said he was on board the boat, and took the property, cloths, &c., to prisoner No. 27, and sold them to him for 850 Rupees.

No. 13, before police and magistrate confessed to dacoity and receipt of some rupees.

No. 14, made similar confessions.

No. 15, before police confessed to dacoity and produced some property and one rupee as the fruits of it. In the *foujdaree* court, he denied in toto. He had no witnesses in his defence.

No. 16 made full confession of dacoity and receipt of plundered property in the *mofussil*. Before the magistrate, he denied and cited evidence to prove he was maltreated to confess.

No. 17 made similar confession before police. Before the magistrate he went so far as to say he remained on board another boat, when the dacoits brought the property there. He has no witnesses.

No. 18 confessed to the same effect and got 60 rupees as his share.

No. 20 also confessed before police and magistrate. He remained in another boat and got 40 rupees.

No. 22 confessed in *mofussil* to dacoity and receipt of 8 rupees. He pleaded not guilty before the magistrate and summoned witnesses to prove he was at home.

No. 25 confessed both offences, dacoity and receipt of property, before police and magistrate.

No. 26 exactly as the last in the *mofussil* and produced 4 rupees. Before the magistrate, he denied. He has witnesses to prove he signed something and that he did not commit dacoity.

No. 27, this prisoner admitted throughout that he purchased the cloths from the prisoners, Nos. 10 and 12; he is a cloth-merchant and has dealings to a large amount; he brings forward evidence to good character also.

The purchase of cloths from such persons as the prisoners, Nos. 10 and 12, appears a suspicious circumstance, and it should have been very clearly proved that the property was bought at an undervaluation, or that it was bought by the prisoner No. 27, with the knowledge that it was plundered property. This is not satisfactorily established and the prisoner must have the benefit of any doubts which may arise.

No. 10, this prisoner's case remains to be disposed; he is alleged in the proceedings to have been one of the leaders; he has denied throughout; property, Nos. 156, 157 and 158, was produced from the thatch of his house, some four or five weeks after the dacoity. A *pator* or stone plate and two cloths, torn pieces of *nyansook*, are the property referred to, the recognition of which is a matter of difficulty.

The finding of the property, after so long a period, between the 14th and 30th March, in the possession of any of the prisoners, when, in an interval of five or six weeks, they had ample time to remove or make away with it, is by no means satisfactory proof against them. The two police *darogahs* were unable for some months to discover any thing, the clue, to the discovery, and the whole proceedings, of the police, founded on the suspicions created by what they heard from the three witnesses, Hurchand, Ramchand and Nobokishen, are not *data* upon which it would be safe to convict. I must rely, therefore, as I have said, on the prisoners' confessions before the magistrate; for though it is unaccountable that men should thus confess in the *foujdaree* court, after the lapse of weeks, during which they were not even suspected by the police, yet their confessions were voluntarily made and are attested by the subscribing witnesses.

I confirm the sentence passed by the sessions judge on the prisoners, 11, 12, 13, 14, 15, 17, 18, 20, 25, convicting them of being accomplices in the dacoity.

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The evidence for the prosecution is not of so strong and satisfactory a nature, as to warrant a sentence of five and seven years' imprisonment, with irons and labor, upon the other prisoners; they are acquitted and must be released.

PRESENT:

J. DUNBAR, Esq., *Judge*.

GOVERNMENT,

versus

Hooghly.

THAKOOR DASS KOWRA (No. 5.) AND AUNOOP BAGDEE (No. 6.)

1854.

January 12.

Case of
THAKOORDAS
KOWRA and
another.

CRIME CHARGED.—1st count, dacoity in the house of Sheikh Ausheuddin at Aulasin in which property to the amount of Co.'s Rs. 1,456-8, was plundered; 2nd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 29th and 30th December, 1853.

Remarks by the officiating additional sessions judge.—The prisoners were committed, by the commissioner for the suppression of dacoity, and plead not guilty to the indictment.

The evidence of two approvers convicts the prisoners of both counts of the charge. It details the particulars of the dacoity in question under the leadership of two renowned Sirdars, Nobin Bagdee and Shuste Bagdee, and proves that the prisoners are dacoits by profession, associated with organized gangs, and have been concerned in several dacoities in the neighbouring districts.

The recorded confessions of the approvers, before the commissioner for the suppression of dacoity, which implicate the prisoners, were taken with every precaution to prevent collusion between the deposing parties, and I see no reason to doubt either their truth or voluntariness.

Proof of the occurrence of the dacoity charged, and the greater part of those detailed in the original statements made by the approvers, will be found in the record of the trial, the latter furnished by the magistrate in whose jurisdiction the offences took place.

The prisoners make no defence beyond pleading a good character, and alleging themselves to be the victims of enmity. They cite no witnesses.

I convict the prisoners of both counts of the charge, on the approvers' evidence and documentary proofs adduced on the trial,

and recommend that they be sentenced to transportation for life with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) It is on record, by the commissioner for the suppression of dacoity, that while the original statements of the approvers were being taken down, each man was kept quite separate under separate guard, so as entirely to preclude the possibility of collusion. Their evidence on oath in this trial, confirms all that was then stated by them, respectively. According to the evidence of Gopal Doolye, Thakoor Dass was concerned with him in seven dacoities, Aunoo Bagdeo in two; while according to the evidence of Rakhal Bagdee, Thakoor Dass was engaged with him in eight dacoities, and Aunoo in fifteen. The actual occurrence of the greater part of these dacoities is proved from the old records, and in regard to six of them the statements of the approvers, as originally given, entirely correspond in all essential particulars.

I concur in the conviction, and sentence the prisoners to be imprisoned for life in transportation beyond sea.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND ANOTHER,

versus

COSSIM ALLEE KHAN (No. 37.)

Bhagulpore.

CRIME CHARGED.—1st count, forging two documents, the one a deed of sale of certain lands, viz., a piece of about 8 *kattahs* 6½ *dhoors* within the sepoy lines in *thannah Ruttun*, being the shares of Mussts. Bhatu and Wuzeerun, without the consent or knowledge of Mussts. Bhatu and Wuzeerun aforesaid; the other being a power of attorney dated 5th February, 1853, purporting to be a paper signed by Mussts. Bhatu and Wuzeerun together with Musst. Bunnoo, mother of the prisoner, authorizing the sale of the abovementioned lands together with his own and his mother's share; 2nd count, fraudulently preparing the above two documents.

CRIME ESTABLISHED.—Forgery.

Committing Officer.—Mr. W. T. Tucker, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhagulpore on the 29th October, 1853.

Remarks by the sessions judge.—Prisoner pleads not guilty.

Nasir Khan prosecutor is husband of one of the persons (Musst. Bhatu) whose name has been forged; the other, Wuzee-

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Case of
THAKOORDASS
KOWRA and
others.

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Case of
COSSIM ALEE
KHAN.

Prisoner convicted of forgery and sentenced to four years' imprisonment by the sessions judge. Appeal rejected.

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Case of

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run, is Bhatu's sister, both women are first cousins of Cossim Allee prisoner. Prisoner, Wuzeerun and Bhatu have same land in common, part of this consists of 16 *kattahs* 13 *dhoors* building land, or otherwise occupied by houses in the invalid sepoy lines of *thannah Ruttun*. Prosecutor accuses prisoner of forging Bhatu's and Wuzeerun's names to a deed of sale of this 16 *kattahs* 13 *dhoors* of land, their share of the same being one-half or 8 *kattahs* 6½ *dhoors*; also of forging the same names to a power of attorney to register the aforesaid deed of sale. The deed of sale and power of attorney are produced in court, as are also four witnesses who depose to Wuzeerun and Bhatu being *purdanisheens*, never leaving their own houses, being at enmity with Cossim Allee and never going to his house or he to theirs, as also to Nasir Khan, being their sole manager and man of business. This evidence not appearing to me sufficient, I, with the consent of the prosecutor, caused the attendance of Mussts. Wuzeerun and Bhatu, who came into court in a covered *palanqueen* and gave their evidence, distinctly on oath, to effect that they had never authorized prisoner to write the deeds in question, or sign their names to any document; had never been to his house or had any communication with him whatever, there being a feud between them from their father's time; this was the case for the prosecution.

The defence consisted in assertion of the goodness of the deeds, and authenticity of the two women's consent to them, producing six witnesses to their execution in presence, and with full consent, of both Wuzeerun and Bhatu.

These witnesses were subjected to a close cross-examination, throughout which the greatest hesitation and prevarication prevailed, convincing the jury and myself of their unworthiness, they were evidently instructed to a certain point, all agreeing that the deeds were witnessed at 11 A. M. but only one No. 10, being in the least acquainted with the English hours generally, they all agreed that Bhatu was much fairer than her sister, and that Cossim Allee's house faced to the east; but there was much contradiction as to whether the women actually uncovered their faces in the presence of the witnesses or not, and on other minor points, but more than any thing else the hesitating, evading demeanour of the witnesses was strikingly apparent, the deed was stated to have been drawn up and executed in Cossim Allee's house in the town of Monghyr, all the witnesses with one exception are from the invalid *thannah* of *Ruttun*, where prosecutor has landed property; the only one of Monghyr Mutroo No. 5, denying his signature and all knowledge of the matter. Prisoner, were his story true, might easily have brought evidence of the visit of the women to his house, but he confines himself entirely to those whose names were attached to the *kibala*.

The jury bring in a verdict of guilty on both counts of the

indictment, I fully concur in their finding on the 1st count, namely, the forging two documents, &c.

The prisoner Cossim Allee is duly convicted of forgery, with intent to defraud Mussts. Wuzerun and Bhatu of their property, and sentenced to four years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The deed of sale was in favor of one Zameer Khan, who, when called upon, produced it, and asserted that Cossim Allee and the women jointly executed the deed in his favor, and received the consideration money from him. This is Cossim Allee's defence. The women however deny this altogether, and the witnesses cited by the prisoner were, for the reasons stated by the sessions judge, discredited by him.

There seems good reason to believe that the sessions judge's estimation of their evidence was correct, as no cause is apparent to account for the sale of land, in which the family live and have succeeded to, and the presumption is strong on the facts, that Cossim Allee was induced to practise this fraud and gave effect to the forgery by registering the deed, in the hope of ultimately securing to himself exclusive possession of the property. I convict him of the forgery and confirm the sentence passed by the sessions judge.

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Case of
COSSIM ALLEE
KHAN.

PRESENT:

J. DUNBAR, Esq., Judge.

GOVERNMENT,

versus

KALOO DOME.

Hooghly.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 30th December, 1853.

Remarks by the officiating additional sessions judge.—The prisoner was committed by the commissioner for the suppression of dacoity, under the provisions of Act XXIV. of 1843, and is charged with having belonged to a gang of dacoits. He pleads not guilty to the indictment.

The approver evidence offered on the trial convicts the prisoner. The witness No. 1, proves that he committed a dacoity at Kantapore, with an organised gang under the well known Sirdars, Nubin Bagdi and Kishto Bagdi, where the dacoits returned to the premises after having vacated them with the

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The prisoner was convicted of belonging to a gang of dacoits, but, as he did not appear to be an old and hardened offender, he was sentenced to

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nishment.

spoil, on missing three of their body, and released them from a room in which they found them locked up by the people of the house. And the witness No. 2, proves that in addition to the above affair, the prisoner took share with him in three other dacoities, of which he gives a summary account.

The remaining evidence for the prosecution goes to show the reality of the Kantapore dacoity, and the detailed confessions of the approvers, before the commissioner for the suppression of dacoity, which are above all suspicion, both as regards their truthfulness and freedom from collusion, directly implicate the prisoner.

The prisoner's only plea is a good character, but he makes no attempt to establish it.

Under the terms of the law, by which he is tried, I consider the prisoner guilty of having belonged to a gang of dacoits. Both the approvers depose to the fact, and that evidence is corroborated by the statements made in detail by them, before the arrest of the prisoner; I therefore convict him of the charge, and recommend that he be sentenced to transportation for life with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar). One approver charges the prisoner with having been concerned with him in four dacoities, the other swears to only one. The occurrence of two only, of the several dacoities mentioned, has been ascertained from the records. The prisoner would not, therefore, appear to be one of those offenders so frequently and habitually concerned in dacoity, as either to render it expedient, that he should be made an example of, or as to preclude all hope of amendment. Under this view, concurring in the conviction, I sentence the prisoner, Kaloo Dome, to be imprisoned for 16 years, with labor in irons in banishment.

PRESENT :

J. DUNBAR, Esq., *Judge*.

GOVERNMENT AND REETOO SAHOO,

versus

DHONTAL (No. 6,) PURAHOO (No. 7,) JUGGOO (No. 8,) JHINGUT (No. 9,) AND MUSST. LOUNGEE (No. 10.)

Tirhoot.

1854.

CRIME CHARGED.—Prisoner No. 6, dacoity with wounding of Jankee *chowkeedar*, and plunder of property valued at Co.'s Rs. 704-12—Prisoner No. 9, 1st count, knowingly having in possession certain articles of the above plundered property, amounting to Co.'s Rs. 22-12; 2nd count, privity after the fact.

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CRIME ESTABLISHED.—Prisoner No. 6, dacoity with wounding of Jankee *chowkeedar* and plunder of property valued at Rs. 704-12. Prisoner, No. 9, knowingly having in possession property valued at Rs. 16-8, acquired by dacoity.

One prisoner convicted of dacoity with wounding, and sentenced by the sessions judge to ten years' imprisonment, another prisoner in the same case convicted of receiving the stolen property and sentenced to four years' imprisonment by the sessions judge. In appeal the former prisoner's sentence upheld, but the latter acquitted.

Committing Officer.—Mr. F. A. Glover, joint-magistrate of Chumparun.

Tried before the Hon'ble R. Forbes, sessions judge of Tirhoot, on the 9th September, 1853.

Remarks by the sessions judge.—In this case the above five prisoners were arraigned on the abovementioned charges, and conformably to Act 24, 1843, the case having been tried without the assistance of the law officer, the prisoners Nos. 6 and 9, were convicted and Nos. 7, 8, (the sons) and No. 10, (the mother-in-law of prisoner No. 9), acquitted and set free.

The prosecutor, a *mahajun* and *thikadar* of *mouzah* Peeprah, in which, though in different *tolahs*, both he and the prisoners reside, deposed that on the night of Saturday the 7th May last, or 14th *Bysakh*, 1260, F. S. the witness Tupsee Kulwur (No. 2,) and himself were asleep in the outer apartment of his house, when, about 9 o'clock, a band of dacoits having four lighted torches, making a great noise, naked to the waist, and with their heads tied up and armed with *gorassas* or battle-axes, spears, *lattees* and swords, came to the door of his house, at which time the witness Jankee *chowkeedar*, No. 1, who had been going his rounds, also arrived there. The dacoits asked the *chowkeedar* some questions, and the prosecutor, hearing them mention his name, fled through fear of them by another door to the Bussunta *tolah* about 5 *beeghas* distance, where as well as in another *tolah* called "Lungree" he gave the alarm of dacoits and, having collected together some of the villagers, returned with them to his own house. During his absence the dacoits had broken open three chests, and carried off property consisting of cash, jewels, clothes and utensils valued at Rs. 704-12, and the prosecutor observed the witnesses Tupsee Kulwur (No. 2,) Tofanee (No. 3,) and

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and Jankee *chowkeedar* (No. 1,) lying wounded near his house-door, all those three persons having informed the prosecutor, that they had recognized among the robbers the prisoner Dhontal Aheer (No. 6,) whom they also observed pointing out to the other dacoits where the articles of property carried off 'were to be found. Early the next morning too, the prosecutor found a hatchet and a *lattee*, left by the robbers, lying outside his house. The prosecutor after this went and gave information at the *thannah*, and the police accordingly took up the prisoner Dhontal in whose house, however, when searched, nothing was found. In consequence too of the prosecutor suspecting the prisoner Jhingut Aheer (No. 9,) his house was searched, inside which, in an earthen granary, was found a silver *haslee* or necklace, and in another place, two women's *sarees* or petticoats, the former being identified by the prosecutor as his property. The prisoner Jhingut himself was not at home when his house was searched, but his two sons the prisoners "Purahoo" and "Juggoo" (Nos. 7 and 8, acquitted) were, and the latter stated before the *darogah* and in the *foujdaree* court that the *haslee* belonged to the wife of their *gooroo* who had left it at their house. Afterwards the house of prisoner Musst. Loungee (No. 10), the mother-in-law of the prisoner Jhingut and residing near him, was searched, in which was found a *gilaf*, the prisoner herself being absent from home at the time. The prosecutor further deposed that the prisoner Dhontal had been in the habit of frequenting his house from time to time.

Five eye witnesses Nos. 1, 2, 4, 5 and 6, deposed, both in the *mofussil*, in the *foujdaree* and in this court (as did witness No. 3, in the 2 former, but who was at the time of the trial unable from severe illness to attend this court) to their having seen a band of about thirty or forty dacoits assembled at the prosecutor's door and that having entered the house, they carried off his property and decamped with it after wounding each of them. Two of the above witnesses (Nos. 1 and 2,) deposed, both in the *mofussil*, in the *foujdaree* and in this court, to their distinct recognition of the prisoner Dhontal among the dacoits, both by the light of the torches and from their having previously known him, and to their observing that prisoner point out to his associates where the property was. The witness Tupsee Kulwur No. 2, deposed that Dhontal aimed a blow at him with a *lattee* which however missed him.

Four witnesses Nos. 12, 13, 14 and 15, deposed, both in the *mofussil*, in the *foujdaree* and in this court, to the finding of the silver necklace identified as the prosecutor's property by the witnesses Nos. 2, 16 and 17, (the latter being the *sonar* who made it) in the house of the prisoner Jhingut No. 9.

The injuries received by the wounded witnesses were, in the absence on leave of the sub-assistant surgeon, stationed at Motee-

hatee, examined by the native doctor, who reported that none of them were very severe; that received by the witness No. 1, Jankee *chowkeedar*, whose right arm was broke near the wrist, being the most so, but all had nearly healed before the trial came on.

All the prisoners pleaded in this court, as they had done at the *thannah* and before the joint-magistrate, *not guilty*.

The prisoner Dhontal set up an *alibi* in his defence, pleading, that six days before the date of the robbery he had gone to a village called Golaghat, distant from his own village ten *coss*, whence he only returned on the Sunday or day following the dacoity. He admitted, both in the *foujdaree* and this court, that he had been once imprisoned for three months for stealing a buffalo. To substantiate his plea of an *alibi* he called eight witnesses, of whom four knew nothing, and the remaining four deposed as follows.

1. *Buksh Koeree* residing at Patkowiee, (on the road from Golaghat to Peeprah), deposed that 14th days of *Bysakh* having elapsed, Dhontal came from the west to his house early in the morning of Saturday and remaining there that night, departed the next morning, i. e. Sunday.

2. *Bekaree* residing at Golaghat, deposed that about the 12th or 13th of *Bysakh*, Thursday, Dhontal came to that *mouzah* to sell paddy and having sold it on the *Friday*, left the same day (the day of the dacoity being a *Saturday*.)

3. *Udheen Pundit* also of Golaghat, deposed that Dhontal came there to sell paddy on the 14th of *Bysakh*, a *Thursday*, (whereas the 14th was *Saturday* the day of the robbery) and returned home on the *Friday*.

4. *Tola Rao* also of Golaghat, deposed that Dhontal came there to sell paddy on the 13th of *Bysakh*, a *Thursday*, (whereas the 13th was *Friday*) and went away on the *Friday*.

None of these 4 witnesses, when asked, could tell the date of the day on which they were being examined in court.

The prisoner Jhingut defended himself in the *foujdaree* court by stating, that the *haslee* found in his house was not his, (and at variance with what his sons had alleged) that neither had any one left it there, and he added that the prosecutor must have had it put into his house at the time of the search. On being questioned, however, by the joint-magistrate as to the discrepancy between his own and his son's statements as to how the *haslee* came to be in the house, (the latter having stated that it belonged to, and had been left there by, the wife of their Gooroo) he answered that this latter female "did not shew herself before him, and that if she did leave the *haslee* in his house, would be able to identify it."

In this court he pleaded, that the *haslee* found *did* belong to his Gooroo's wife, and that the prosecutor and himself were at enmity about rent.

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He cited no witnesses to prove that the *haslee* belonged to his Gooroo's wife, but he called eight witnesses to speak to his previous good character to which effect they did depose, two of them stating that there had been some quarrel between the prosecutor and prisoner, and three others deposing to their having heard that a necklace of the prosecutor's had been found in the prisoner's house.

By which of the dacoits the witnesses were wounded is not proved, but I consider the testimony of the witnesses, both in the *mofussil*, *foujdaree* and this court, to the recognition of the prisoner Dhontal, and their story of their having told the prosecutor, on the night of the occurrence, that they had recognized him among the dacoits, to be from the beginning, and throughout, distinct, unvarying and conclusive. It is quite true too, as remarked by the joint-magistrate in the calendar, that the prisoner Dhontal is a man of a very peculiar cast of countenance; he has a very striking malformation of the mouth, and might be easily recognised even amidst a crowd by those who (as the witnesses) "had known him before." Besides the fact of the prisoner and witnesses being residents of the same village, it appears, from the prosecutor's *thannah* deposition, that the prisoner had three years before been employed as *chowkeedar* of *mouzah* Peeprah.

The prisoner's defensive plea of an *alibi* entirely failed, not being supported by credible, consistent, or satisfactory evidence.

As regards the prisoner Jhingut, the finding of the *haslee* in his house, the conflicting statements of himself and his sons to account for its being there, its satisfactory identification by the *sonar* who made it and others, as the prosecutor's property, and the absence of all proof of the article having been left in the prosecutor's house by, or its belonging to, his gooroo's wife, or indeed of its belonging to any one but the prosecutor, added to the established fact of previously existing enmity between the prosecutor and prisoner, convincingly bring home to the latter the crime of "knowingly having in possession plundered property."

Convicting, therefore, the prisoner Dhontal of dacoity attended with wounding and plunder of property valued "at Rs. 704-12," I have sentenced him to imprisonment for ten years, with labor in irons in banishment, and finding the prisoner Jhingut guilty of "knowingly having in possession, property valued at Rs. 16-8 acquired by dacoity," I have awarded to him a sentence of imprisonment for four years with labor in irons.

Respecting the prisoners Purahoo and Juggoo Nos. 7 and 8, and Musst. Loungee No. 10, as the two former were living with their father and there is no proof that they acted independently of him, and as the article of clothing found in the house of the latter, though claimed by the prosecutor, was not identified by the witnesses and was not indeed capable of satisfactory identification, all three were acquitted and released.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar). I concur with the sessions judge in holding the evidence against the prisoner Dhontal to be sufficient. The sentence passed upon him is therefore confirmed. I do not think, however, that the proof is equally good against the prisoner Jhingut. It is true, the *haslee* has been identified by the *sonar* who made it, and by others; but the finding of it, in the prisoner's house, is not entirely free from doubt. His house was searched, in his absence, on a mere general suspicion raised by the prosecutor, with whom too, there is some reason to believe that he was at enmity. I give him the benefit of the doubts arising from these circumstances, and acquit him.

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Case of
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others.

PRESENT:

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND ANOTHER,

versus

SHEIK CHECHUR (No. 6), AND SHEIK MEAJAN
(No. 7.)

Mymensing.

1854.

CRIME CHARGED.—Wilful murder of Sheik Khechah.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. C. E. Lance, officiating magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 11th November, 1853.

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Case of
SHEIK CHE-
CHUR and ano-
ther.

Remarks by the sessions judge.—There were no eye-witnesses in this case, but from the circumstantial evidence, it appears that the prisoners went to visit a *bazar*, on the night of the 12th August last, and as they were returning home about a *pukur* of the night remaining, they met three persons sitting at a pathway near one Ruttun Sircar's house. On seeing the prisoners two of them ran away, when the prisoners taking them for thieves followed them, and seizing the deceased assaulted him with *lattees*; the prisoners then carried him to Ruttun Sircar's house, No. 7, being the Sircar's servant, when Rambullubh Shah, the brother of the Sircar, recognized a *lotah* found in possession of the deceased as belonging to him; he then made enquiries and discovered that two burglaries had been committed in his house. They secured the deceased for the night and he died at about one half *pukur* next morning, from the effects of the beating, never having spoke after the assault. The civil assistant surgeon, who held the *post mortem* examination on the corpse of the deceased, deposed in this court that the skull was fractured, and there were severe bruises

Two prison-
ers convicted
of culpable
homicide and
sentenced, by
the sessions
judge, to five
years' impris-
onment. In
appeal, one
was acquitted,
but the sen-
tence on the
other was con-
firmed.

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on the right side of the head and the right arm, which was likewise slightly lacerated ; that these injuries must have been caused by severe blows of a *lattee* or some such instrument, and could have been produced with either of the *lattees* shewn to him in court, and that the fracture of the skull was the immediate cause of death, as it was so extensive, that he must have died almost immediately. In the *thannah*, prisoner No. 6, admitted having followed the persons, whom they took for thieves, along with prisoner No. 7, and Ruttun Sircar's servant witness No. 19, and Needoo, and that No. 7, first attacked deceased with the *lattee*, and afterwards he and others also beat him. Prisoner, No. 7, also admitted having along with others, chased and beat the deceased, but that No. 6 was the person who first inflicted a blow on his head which immediately knocked him down. Before the magistrate prisoner, No. 6, stated that he caught the man by order of Rambullubh Shah, when witness No. 19 inflicted a blow on his arm with a *lattee*, and prisoner No. 7, a blow on the head which immediately knocked him down ; that he (No. 6,) and others then administered a few more blows to the deceased. Prisoner No. 7, denied having assaulted or wounded the deceased, urging that witness No. 19 was the person who fractured the deceased's skull with a *lattee*. In the sessions court prisoner No. 6 denied the charge, saying that when he heard of a thief having been caught at Ruttun Sircar's house, he went to ascertain the fact ; that the man was killed by the Sircar's servant, witness No. 19, and that he (prisoner) had been falsely denounced by the Sircar as he declined to become his *ryot*, and his mofussil confession was extorted by the police by ill-treatment. Prisoner, No. 7, also denied having assaulted the deceased, saying that on hearing that there were thieves near the house he, being the Sircar's servant, accompanied No. 6 and others to look for them and hearing No. 6, calling out from a distance that a thief was caught he went there, and saw a man (the deceased) lying on the ground covered with blood ; that he and others then carried him to Ruttun Sircar's house and tied him up and left him there, and next day heard that he had died ; that there was a hole in the floor of the house like that made by a burglar, and that the police *mohurer* ill-treated him. The evidence, of the witnesses cited by the prisoners, was however only from hearsay and could not exculpate them from the charge. The *futwa* of the law officer convicts the prisoners of culpable homicide, and declares them liable to punishment by *accoobut*, a verdict in which I concurred.

Sentence passed by the lower court :—Each to be imprisoned with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes.) Sheik Chechur prisoner No. 6, although denying that he gave the blow on the head which killed the deceased, admitted be-

fore the magistrate having struck him with his *lattee* after he was secured, and on the suspicion only that he was a thief. Against the other prisoner No. 7, Meajan, there is no proof of any criminal act, the merely assisting in the capture of a supposed thief cannot be counted such, and his own admission goes no further. I uphold the conviction and sentence passed on Sheik Chechur, but acquit Meajan, prisoner No. 7.

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Case of
SHAIK CHE-
CHUR and ano-
ther.

PRESENT :

A. DICK, Esq., *Judge*.

GOVERNMENT,

versus

SOONDURLAL ALIAS LALLA.

Purneah.

CRIME CHARGED.—Murder.

1854.

Committing Officer.—Mr. H. Doveton, deputy magistrate of Mudheypoora, Purneah.

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Tried before Mr. G. Loch, officiating sessions judge of Purneah, on 26th of November, 1853.

Case of
SOONDERLAL
alias LALLA.

Remarks by the officiating sessions judge.—On the 30th September, Pirthee Pandey (since deceased) made the following statement to the *darogah* of *thannah* Nuthpoor. About fifteen days previous to the date of his deposition, he had given 3 Rs. to the prisoner Soondurlal alias Lalla *moody* to provide him with rice and other articles of food. He had received one rupee worth, but could get no more from the prisoner whom he called to account whenever he met him. On the 27th September, about 6 o'clock P. M. (two *ghurees din bagee*) the prisoner was passing his door, Pirthee Pandey stopped him, and after disputing about the money they parted and Lalla went home. About 8 o'clock at night (three *ghurees rath*) the prisoner came to his house and called him. Pirthee Pandey went to the door, when the prisoner threw him down, and thrust a knife into the left side of his stomach through which wound his entrails protruded. Hearing his cries, his servants Gouree Khawas and his wife and Chechaye Chokra ran to his assistance. The prisoner ran off on seeing them, and made his escape, taking with him the instrument with which he had inflicted the wound, and a cloth belonging to Pirthee Pandey (neither instrument nor cloth have been found). On the 2nd of October, Pirthee Pandey arrived at Mudheypoora, and made a similar statement on oath before the deputy magistrate, the only discrepancy being, that before the *darogah* he says Gouree Khawas saw the wound inflicted and that his wife was present at the time of the occurrence, and before the deputy

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victed of wil-
ful murder on
violent pre-
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magistrate that Gouree and Chechaye, hearing his cries, ran to him and saw the prisoner running off.

Pirthee Pandey was admitted into the hospital at Mudheypoora on 2nd October, 1853, and died on the following morning. The native doctor, who dressed the wound, found that mortification had taken place, and on examining the body, discovered a wound on the spleen 2 inches long by $1\frac{1}{2}$ broad, which of itself he considered sufficient to cause death. The wound had been inflicted by some cutting instrument.

Gouree Khawas, Chechaye Chokra, Musst. Gungia or Bhiknee, were eye witnesses to the fact. The two first state that there had been a dispute between the deceased and the prisoner, on the evening of Tuesday, that they had been separated by Lullitram Dass and each went home, that after dark (three *ghurees rath*) the prisoner came and called the deceased who went out to him. Witnesses were in the verandah of the house, and hearing his cries ran out and saw him on the ground and Lalla sitting astride on him and stabbing him; that on seeing them, Lalla ran off and they found Pirthee Pandey with a wound on the left side of the stomach through which the entrails protruded, and he said that the prisoner Lalla had wounded him. Musst. Gungia was inside the house and ran out on hearing the cries, and gives a similar account of what she saw.

Lallitram Dass and Jhoomun Pandey witnesses to the *sooruthall*. Lullitram states that on the afternoon of the 27th, deceased and the prisoner had a quarrel, that he separated them and they went to their own houses. About three *ghurees rath* Gouree Khawas came to his house and called him, saying that Lalla had wounded Pirthee with a knife. It was dark and raining hard, so he did not go till the next morning; the wounded man accused the prisoner Lalla of having wounded him.

Phool Chand Hujjam—Phool Chand Hujjam was sitting at his door about two *ghurees rath*, when the prisoner came running by. He asked who it was, prisoner mentioned his name, and on further questioning, said he had had a dispute with Pirthee Pandey as he was returning from the *haut*, that he had given Pirthee a push and he had fallen on a *khoonta*, and as he cried "murder" the prisoner ran away, witness took the prisoner to the *zemindar* who directed him to be put under restraint, till the matter was ascertained. The next morning it became known that the prisoner had wounded Pirthee Pandey; and he continued under charge of the witness and others, till the *darogah* arrived.

The evidence of the other witnesses merely refers to the dispute which took place in the afternoon, between Pirthee Pandey and the prisoner Lalla.

The prisoner denies the charge and in his defence states, that he had received Rs. 2, from Pirthee Pandey, and had given him

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their value in rice, &c. ; that the deceased wanted more and frequently disputed with him ; that on the afternoon of 27th September, two *ghurees din bagee*, as he was returning from the *haut*, with things he had purchased for his shop, he was stopped by Pirthee Pandey and his servants, Gouree and Chechaye, and taken by them to Lullitram's house. After a good deal of disputing, Pirthee Pandey being very angry, said he would pay him off, he would stab himself and get up a complaint against him. Lullitram and Chutterbhooj separated them, and the prisoner went to the *zemindar* and complained, that his property had been carried off. The *zemindar* promised to get it restored, and in the mean time put him under charge of Phool Chand and two others, to prevent his going to Mudheypoora to complain. Two days after, the *zemindar* and Pirthee Pandey gave the *chowkeedar* of the other *tola* a couple of rupees and sent him to the *thannah* to report that the prisoner had wounded Pirthee Pandey. The *darogah* took him to Pirthee Pandey's house, and on his denying the charge, recommended him to say that Pirthee Pandey had fallen on a bamboo *khoonta*, and received a wound, and as this advice was accompanied by a sharp blow from an attendant *burkundaz* he admitted what they proposed. The prisoner refused to have his witnesses examined. Before the *darogah* and the deputy magistrate, the prisoner acknowledged having had a scuffle with the deceased whom he pushed, and the deceased fell upon the bamboo *khoonta* and was wounded.

From the deposition of the deceased and the evidence of the witnesses, it is proved that on the afternoon of the 27th September last, the deceased and the prisoner Soondurlal alias Lalla had dispute about the money advanced by the former. They were separated by Lullitram before whose house the dispute occurred, and each of the disputants went home. About three *ghurees rath*, (8 o'clock,) the prisoner came to the deceased's door, called him out, and having thrown him down, stabbed him, and ran off as the deceased's servants came to his assistance. The prisoner made for his own house, and was stopped by Phool Chand, who saw him hurrying by, and having ascertained from him that he had had a dispute with the deceased, took him to the *zemindar*, by whose order he was kept in charge till made over to the *darogah*, on 30th September, 1853, as it was ascertained the next morning that he had wounded the deceased.

As regards the evidence of the eye-witnesses, I think they prove too much, when they state that they recognized Lalla while sitting upon, and in the act of stabbing the deceased ; for the night was dark and it was raining heavily at the time, and they were at some cubits distance when they heard the cries. Gouree says that when the prisoner came, and called, the deceased asked his name, and he said I am "Lalla," on which the deceased went out to him. That they saw the deceased thrown down, and a

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man on him (in the act of stabbing him as stated to the court, or withdrawing the knife after having committed the deed, as stated to the deputy magistrate) who ran away on seeing them I have no doubt; and knowing that Lalla had come, and hearing from the deceased that Lalla had wounded him, they have the impression on their minds that they recognized the prisoner. Immediately after the deed Gouree Khawas a servant of the deceased ran to Lullitram's house, and told him to come as Lalla had wounded his master; and the next morning when Lullit and others went to the place, the deceased accused the prisoner Lalla of having wounded him. Notwithstanding the doubt I have expressed as to the statements of the eye-witnesses there is, in my opinion, sufficient evidence to bring the charge of wilful murder home to the prisoner Soondurlall alias Lalla; and as I know of no extenuating circumstances, I recommend that sentence of death be passed upon him.

Great delay occurred in giving notice of the crime to the *darogah*. The *thannah* is only three *cos*s distant. The deceased was wounded on the night of the 27th, but the *chowkeedar* did not give his report till the 29th. Neither the deputy magistrate nor the *darogah* have inquired into the cause of the delay. The evidence of Chechaye Chokra was taken without oath before the deputy magistrate. He is about twelve years old and intelligent. If he did not understand the nature of an oath, a remark to that effect should have been entered on the deposition. In the sessions court, he was able to state the nature of an oath, and gave his evidence with great clearness.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The *futwa* of the *zillah Mooftee*, and also the *futwa* of the *Mooftee* of this court, find the prisoner guilty of the murder on violent presumption. The evidence of the alleged eye-witnesses to the deed, cannot be depended on, as to the actual recognition of the prisoner when perpetrating it, and the instrument with which the wound was inflicted has not been found. The court convict the prisoner on violent presumption of the murder, and sentence him to imprisonment for life in transportation.

PRESENT:

B. J. COLVIN, Esq., *Offg. Judge.*

GOVERNMENT AND MODHOOSOODUN MOOKHOPADHYA,

versus

PURMANUND PURAI (No. 2,) PELLARAM PUNDIT DOME (No. 3,) MOHUN DOME (No. 4,) AND RAMDHUN CHUCKERBUTTY (No. 5.)

West
Burdwan.

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CRIME CHARGED.—1st count, dacoity on the night of the 12th July, 1853, corresponding with the 29th *Assar*, 1260, in the house of Modhoosoodun Mookhopadhaya, plundering therefrom property to the value of Rs. 18-12-6, and wounding the said Modhoosoodun Mookhopadhaya; 2nd count, knowingly receiving and keeping in possession property obtained in the abovementioned dacoity, and 3rd count, belonging to a gang of dacoits.

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others.

CRIME ESTABLISHED.—Dacoity in the house of Modhoosoodun Mookhopadhaya, plundering therefrom property to the value of Rs. 18-12-6, and wounding the said Modhoosoodun Mookhopadhaya.

Sentence passed by the sessions judge upon three of the prisoners affirmed in appeal. The fourth prisoner acquitted, for want of sufficient proof, in corroboration of his *mo-fussil* confession.

Committing Officer.—Baboo Jogeshchunder Ghose, deputy magistrate of Gurbettah.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 30th November, 1853.

Remarks by the sessions judge.—The prosecutor fought with the dacoits and struck one of them with a sacrificial knife, or *buggee*, in consequence of which they soon fled, carrying off nothing but some clothes, which were on the prosecutor's bed-place, and the aforesaid *buggee*.

The only traces of the robbers found, when the *darogah* came next day, were a small *lattee*, the end portion of a sword which had been broken off in the struggle and a burnt stick, which was picked up in a *sau*g field close to prosecutor's house, and called a *mussal*. The prosecutor had some slight wounds on his body, evidently inflicted with a sharp cutting weapon, but it was evident that none of them had been aimed at his life. The night was dark and rain fell, hence none of the robbers were recognized, though the prosecutor pretended that he had seen one very like Hara, the *chowkeedar* of his village, and some dark and light coloured persons. No footsteps nor blood were found outside the house, which was accounted for by allusion to the rain which had fallen. For some days the *darogah* enquired in the neighbouring villages for the dacoit, supposed to have been wounded by prosecutor, but without success.

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Prosecutor's account of the circumstances, under which the prisoners were subsequently apprehended, was as follows :—

On attentive examination of the broken end of a sword, left by the robbers, it struck me, that it must have formed a portion of a brass-mounted one, which belonged to my cousin Ramjee Adheekaree, residing in my village, and I, therefore, asked the *darogah* to enquire for the sword in question and stated that I suspected the individual alluded to. When Ramjee was questioned, he said that he had sold the sword in Calcutta, but his averments were not believed and he was retained in custody. I went home at that time, but returned in the evening, and finding Ramjee still in durance, asked him whether he had had any food. He replied that he would eat some if I gave it to him and took me into the cooking house, attached to the *mal-cutcherry*. When there he told me, that if I would protect him from the consequences, he would reveal every thing. On hearing him say this, I called the *darogah* and requested him to listen to what Ramjee had to say. The *darogah* took him aside, and after some whispering, observed, aloud, that if the discovery of the whole matter could be made by according immunity to one person only, such a course ought to be pursued. Upon this I merely observed that he knew best and returned home. At about midnight the *darogah* went off after the robbers, with Ramjee, but without me, and brought in the prisoners about three days afterwards. On the *darogah's* saying that some of the robbers were inhabitants of my village, I suggested that guard should be placed over and around their dwellings to prevent their removing any secreted property, but nothing of this kind was done. The *darogah* merely observed that there was no property in the houses of the parties alluded to.

The *darogah's* account of the occurrences which led to the apprehension of the prisoners was widely different. His report to the deputy magistrate of the 20th July set forth, that after Ramjee Adheekaree had been apprehended and questioned about the sword, his house was searched without result; that Tara *chowkeedar* then came and said, that *Pellaram Pundit* prisoner No. 3, Moorlee Jullia, a *kamar* of that place, a certain *moochee* and his *gooroo*, a Pauree of Moraghurria, with Ramdhun Chowdry and *Ramdhun Chukerbuttee* prisoner No. 5, relations of Ramjee Adheekaree, had committed the dacoity; that some of them were wounded, and that he was desirous of having their houses searched. At the end of the same report, it was stated that there was every reason to believe that Ramjee must have been the instigator of the dacoity, and that when he was questioned alone, his revelations agreed with those of the *chowkeedar*, but that as he was a very *hoshiaar* personage, he would say nothing of the kind in the presence of witnesses. In his final report of the 27th July, the *darogah* said, that the information received from Tara *chowkeedar* had

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been *secretly* given by Ramjee Adheekaree. In his deposition before the session's court he averred, that after Ramjee had been questioned about the sword and he had accused him of participation in the robbery, in consequence of the apparent falsehood of his statements regarding it, the prosecutor took the said Ramjee aside and after conferring with him, said that he had agreed to point out the property if the *darogah* would protect him from the consequences; that he (the *darogah*) refused to agree to any such arrangement, and that Tara *chowkeedar's* information was subsequently given to him at night, when he took Ramjee with him to assist in searching for the robbers. The *darogah* also affirmed that he had tried to get Ramjee to confess, or say some thing implicative of himself before witnesses without effect; that he refused to do so, though he affirmed the truth of Tara's information; that it was a conference with Ramjee that had induced the prisoners to point out the property, and that he had found it impracticable to induce the latter to confess and name the spots in which the property had been placed, before they proceeded to point it out. The depositions of Tara *chowkeedar* showed, that he must have got his information from Ramjee Adheekaree, and that the latter must have pointed out all the prisoners, with the exception of Mohun Dome (No. 4) to the *darogah*, before they were apprehended. All these circumstances led the court to conclude, that the prosecutor's statement must be the correct one and that the *darogah* must have purchased his information from Ramjee, with a promise of personal immunity.

The evidence against the prisoners, who pleaded not guilty, was as follows :—

Prisoners Nos. 2 and 3. *1st.* Their own confessions in the *mofussil* and before the deputy magistrate.

2nd. The evidence of witnesses who heard them confess on both occasions.

3rd. Mention of their names in the confessions of the other prisoners.

4th. The evidence to the *sooruthal*, shewing that a dacoity had been committed in the prosecutor's house.

5th. Indication of the property found, and its production by themselves and their women.

6th. The evidence of witnesses to indication and production of property.

7th. The evidence of witnesses who recognized the clothes and *buggee* found, as the property of prosecutor.

Prisoner No. 4.—This prisoner did not confess before the deputy magistrate, but his answer was nearly tantamount to a confession, because he affirmed that he had received the property pointed out by him from prisoner Pellaram No. 3. With this difference, the evidence against him was the same as that against prisoners 2 and 3.

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Prisoner No. 5.—This prisoner denied the crime before the deputy magistrate and claimed the clothes found as his own, but the rest of the evidence against him was similar to that arrayed against prisoners 2, 3 and 4. It was moreover shewn by the evidence, that he was a relation of Ramjee Adheekaree.

Prisoner No. 2's defence in the sessions court was, that the darogah and Cheeroo burkundaz, witness No. 1, had forced him to confess by violence; that he had been unjustly accused of dacoity; that the evidence of indication and delivery of the stolen property was false; that certain of his witnesses had been in his house on the 28th and 29th *Assar*, and that he had no evidence of violence to adduce, but certain marks on his person.

The evidence of his witnesses did not support his allegations in a credible manner, and no marks are visible on his body.

Prisoner No. 3, denied the dacoity, or that he had indicated and delivered any part of the stolen property, and affirmed that he had been violently forced to confess; that the clothes pointed out by him in the house of one Ghurbash Kulloo, were his own, and had been left by him in that individual's charge; that the *buggee* claimed by prosecutor was his own and had been lent by him to the prisoner Mohun Dome No. 4, who borrowed it for the slaughter of a kid, and that he was so confused by the ill-treatment of the police, when before the deputy magistrate, that he did not know what he said.

The evidence of his witnesses was totally unworthy of credit.

Prisoner No. 4, made a statement similar to that taken from him in the deputy magistrate's court, but differing in some respects and opposed to the averments made in the defence of prisoner No. 3. He added that he was in the house of one Kashcenath Chatterjee on the night of the dacoity, but his witnesses did not substantiate the *alibi*.

Prisoner No. 5, declared that the clothes he gave up, out of the chest in his house, were his own; that he had been violently treated to make him confess; that he had never been to Ramjee's house, and that he was innocent. His witnesses did not, however, prove that the clothes were his, to the satisfaction of the sessions court.

All the clothes were of a fine description, though some of them were old. Prosecutor said that his brother Ramtarruck Moorkerjee, had sent them to him from Moorshedabad, where he was at service, and it appeared that this was true. The said Ramtarruck was on a visit in the house when the dacoity took place, and it is probable that the attack was made with a view to getting possession of any wages, or savings, he might have brought with him.

On carefully weighing the evidence against the prisoners, and with particular advertence to the futile nature of their defence, the unsteadiness of their statements and the untrustworthy

evidence given by their witnesses, I considered the proof of their having committed a dacoity, attended with slight wounding, full and legal, and therefore convicted and sentenced them as noted.

I, at the same time, ordered that the apparent bad conduct of the *darogah* of Kotulpoor, Huree Buddun Bundopadhya, witness No. 14, in respect to Ramjee Adheekaree, should be brought to the particular notice of the deputy magistrate, through the officiating joint-magistrate, and that his practice of making darogahs witnesses should be objected to.

It is obvious that such a practice removes those officers from the circle of duty, unnecessarily gives them improper opportunities of tutoring or intimidating witnesses, and is far more likely to throw doubt upon the evidence for the prosecution, than to render it more trustworthy and secure. Such was the case in the present instance, and the trial was, therefore, nearly twice as lengthy as it would otherwise have been.

The absence of Hara chowkeedar, on the night of the dacoity, was also brought to the deputy magistrate's notice, and the usual orders were passed in regard to the property, stick, and broken sword blade.

Sentence passed by the lower court. Imprisonment with labor in irons in banishment for ten (10) years and two (2) years more in lieu of stripes.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I concur in the conviction of, and the sentence passed upon, the prisoners, Nos. 2, 3, and 4. The two first confessed in the *mofussil* and before the deputy magistrate, while although No. 4, confessed only in the *mofussil*, his answer before the deputy magistrate is criminatory of him. The property found in the houses of the above prisoners is also sworn to as belonging to prosecutor, and not claimed by the prisoners. Prisoner No. 5, also confessed in the *mofussil*, three days after apprehension, but repudiated his confession afterwards. It is true that the prosecutor has deposed to recognizing him as soon as he saw him after apprehension, but there is nothing in confirmation of his guilt. The evidence to the recognition of the property found in his house, which he claims as his own, is conflicting, and prosecutor and his servant give different accounts of the marks on the articles of clothing. I acquit prisoner No. 5, and direct his release.

The sessions judge's remarks, regarding making the darogah a witness, have been already noticed by the judge presiding over the English department, in the correspondence noted below.*

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* Extract (paras. 1 and 2) from a letter No. 1428, dated 20th December, 1853, from the register of the Nizamut Adawlut to the sessions judge of west Burdwan.

The court, having had before them your letter No. 176 of the 15th inst, submitting the statements connected with the sessions of jail delivery held

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others.

by you in the month of November last, observe with reference to the case of Purmanund Purai and others, Nos. 2 to 5, of statement No. 6, that your remarks are unnecessarily lengthy, and that there was no occasion to enter into such detail regarding the conflicting statements of the darogah and the prosecutor regarding Ramjee Adheekaree, as that person was not on his trial before you.

The Court are unable to concur with you in your remarks, regarding the practice of making police *darogahs* witnesses in the cases which they have investigated. These officers are often able to supply most important evidence, and to furnish information as to the chain of circumstances which may, very materially, assist the court in the examination of other witnesses. The Court request, that if you have issued any orders to the officiating joint-magistrate, objecting generally to their attendance as witnesses that you will immediately withdraw them. The Court consider that the committing officer is the person best able to decide, whether the evidence of the police officer is necessary or not for the conviction of the accused.

In reply to the above the following remarks were submitted by the sessions judge of West Burdwan, with his letter No. 181, dated 24th Dec. 1853.

I have the honor to acknowledge the receipt of your court's letter, No. 1428 of the 20th current, and with reference to the two 1st paragraphs thereof, to represent that the conflicting statements of the *darogah* and the prosecutor, in regard to Ramjee Adheekaree, were compared by me in my abstract of the case for two reasons; 1st, because the order in my final proceeding is a translation of my abstract, and I wished the officiating joint-magistrate to see clearly therein the way in which the *darogah* had been behaving; secondly, because I thought the case likely to be appealed, (as it has been) and I wished to attract the particular attention of the court to that portion of the evidence, which contained an exposition of the way in which the prisoners were pointed out and discovered. I have never written a lengthy abstract since the court admonished me upon the subject last year, without having some such particular reasons for doing so.

The court misunderstood my meaning in regard to *darogahs* being made witnesses. I never meant to say that their evidence might not be requisite in many cases, but that my subordinates ought not to make a practice of sending them in, and the order passed in my final proceeding was to that effect. The deputy magistrate of Gurbettah has frequently forwarded the *darogahs* or mohurrirs as witnesses, when their presence was unnecessary, as I considered it to be in the case of Purmanund and others, and it was to prevent his doing so in future that I issued the order.

I shall be much obliged by your laying the above explanation before the court.

On receipt of the above explanation, the following letter No. 1452, dated 30th December, 1853, was addressed by the Register of the Nizamut Adawlut to the sessions judge of West Burdwan.

The Court, having had before them your letter No. 181, dated the 24th instant, direct me to observe that the explanation which you have submitted is sufficient, and that you should report to the superintendent of police any instance, in which the magistrate may unnecessarily send in police officers as witnesses. It is for the sessions judges to point out such irregularities to the superintendent of police, and it is for the latter, if he concur with you, to notice them with the view to prevent their recurrence.

You are requested to send copy, of the Court's former letter and of this one, to the magistrate for communication to the deputy magistrate.

PRESENT :

J. DUNBAR, Esq., *Judge*.

GOVERNMENT AND KUNCHIUN SINGH,

versus

MUDDUN (No. 28,) HUSNOO (No. 29,) ULFOO (No. 30,) AND MOHEB ALLY (No. 31.)

Bhagulpore.

1854.

CRIME CHARGED.—1st count, wilful murder of Oodwunth Singh deceased ; 2nd count, for being engaged in an affray with homicide.

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Case of MUDDUN and others.

CRIME ESTABLISHED.—Riot with culpable homicide of Oodwunth Singh deceased.

Committing Officer.—Mr. F. A. Vincent, deputy magistrate of Barh.

Four prisoners convicted of riot with culpable homicide and sentenced to seven years' imprisonment. Appeal rejected.

Tried before Mr. R. N. Farquharson, sessions judge of Bhagulpore, on the 27th October, 1853.

Remarks by the sessions judge.—Prisoners plead not guilty. Nine prisoners were arraigned on this charge, of whom five were acquitted.

Deceased went to bathe in the Ganges near his own house ; at the same *ghat* were two boys sons of Muddun prisoner, (No. 28,) Mahomedans ; deceased and Muddun belonged to opposite parties long at enmity on account of some land including a tank claimed by both ; at the *ghat* some quarrel took place between deceased and the Mahomedan boys, sons of Muddun ; deceased seems to have slightly struck one of the boys, the other ran off to the village and told his father, who came out with a number of followers and meeting Oodwunth set on him, and blows were inflicted which caused his death.

The above is proved to my satisfaction in evidence before the court ; that of five eye-witnesses Nos. 1 to 5, inclusive. The evidence of the doctor, attested by two respectable witnesses before this court, sufficiently proves that death was caused by the wounds examined by him on the dead body of deceased.

The prisoners' defence is, generally, that the accusation is made through enmity, which exists on account of some *movah* trees and a tank claimed by both parties. They acknowledge that an affray took place, but lay stress on the evidence that deceased's death was caused by a blow from Peertee Putt (released by the magistrate) with a *lohbunda*. Muddun says he only came on the spot at the last, in time to separate the combatants. Husnoo that he was elsewhere ten *ross* distant. Ulfoo and Moheb Ally say, they were in an affray, were surrounded and beaten by the opposite party, that of deceased.

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The witnesses for the defence of prisoners Nos. 28 and 31, Muddun and Moheb Ally, state there was an affray, but that the prosecutor's party were the aggressors and that Muddun and Moheb Ally were beaten and knocked down. The witnesses for Husnool, No. 29, say only that he was at their village up to nearly the end of *Jeit*, or for the first half of *Jeit*. Ulfoo's witnesses say, either that they know nothing about the matter, or that they heard that there was an affray in which Ulfoo's head was broken.

The jury bring in a verdict of guilty against Muddun, Husnool, Ulfoo and Moheb Ally on the second count of the indictment, viz. affray with culpable homicide, acquitting the other prisoners, in all of which I concur.

The evidence of the five eye-witnesses and the general circumstances of the case have, as above stated, convinced me of the agency of all the four prisoners in the death of Oodwunth; there is however some discrepancy in the depositions of the witnesses at the *thannah* and before this court, as to the use of swords in the affray. The prosecutor Kunchun in his deposition, first taken at the *thannah*, says nothing about swords; a second taken the same day and purporting to be after his recovery from the shock occasioned by his brother's death, says that swords were used, but does not enter into any detail of the wounds inflicted.

There was doubtless an affray, as there have notoriously been many, between the parties concerned. In this case Oodwunth Singh met with his death from a blow or blows inflicted by a party, in which it is clearly proved that Muddun, Husnool, Ulfoo and Moheb Ally took part; these were, as clearly the aggressors, and the attack was in some measure premeditated, the provocation being an insult or slight blow inflicted by the deceased, Oodwunth, on Muddun's young son. The crime does not amount to murder, I have doubts of the weapons used being any thing more than *lattees*, and though the motive was illegally to resent an injury, there was evidently no thought of so serious a result.

The parties appearing as prosecutor and defendants have been long at feud, and, as it appears in evidence, were only recently engaged in an affray of much the same nature, the punishment should be severe both as punishment to those immediately concerned, and as example to the turbulent villagers in the neighbourhood. I sentence Muddun No. 28, Husnool No. 29, Ulfoo No. 30 and Moheb Ally No. 31, to seven years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The proof is complete against Muddun, Ulfoo and Moheb Ally, upon the general evidence and upon their own admissions at the *thannah*. The prisoner Husnool, pleads an *alibi*. The evidence of the two witnesses summoned by him is too general to establish his plea, while the evidence for the prosecution, and

the deposition of Muddun, at the *thannah* upon oath, before he was put on his defence, clearly establish the charge against him. The case is one of great violence upon very little cause; I confirm the sentence.

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PRESENT:

A. DICK, Esq., *Judge*.

B. J. COLVIN, Esq., *Officiating Judge*.

GOVERNMENT AND ANOTHER,

versus

NUNHUK NONIAR (No. 1.)

Behar.

1854.

CRIME CHARGED.—1st count, wilful murder of Gopal Noniar, boy, for the sake of his ornaments; 2nd count, robbing the ornaments valued at 9 Rs. and 15 annas, from the body of the deceased; 3rd count, knowingly having in his possession ornaments valued at 9 Rs. and 15 annas, being the whole of the aforesaid property acquired by the above murder.

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Case of
NUNHUK
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Committing Officer.—Mr. F. Hogg, deputy magistrate of Sherghotty.

Sentence of
death passed
upon the pri-
soner, convict-
ed of murder-
ing a boy for
the sake of
his ornaments
by drowning.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 6th of October, 1853.

Remarks by the sessions judge.—The deceased, a boy of about nine years of age, was missed on Tuesday evening the 30th August last, after having been seen playing on the high road which passes through the village of Mudunpore, where the prosecutor's father and the prisoner reside. The father unsuccessfully searched for his son, but whilst continuing his inquiries, in the course of the night, was informed by Tenee Doosad (witness 10,) and Ramnath Banerjee (witness 11,) that during the evening they had met the deceased in company with the prisoner on the high road outside the village to the westward. The prosecutor's suspicions were then aroused by the prisoner's attempts to evade seeing him, and when he did appear, by his acknowledging having murdered his son, as stated by him before the deputy magistrate and this court, although somewhat at variance to his original statement before the police, which purported that towards morning Doonghur, the prisoner's brother, had augured that the child would be found dead or alive west of the village. Be this as it may, the search was followed up, the first thing on Wednesday morning as deposed to by the witnesses, Idul (witness 12) Achuz (witness 13) and Nem (witness 14,) when the deceased's body was found, drowned and stripped of its ornaments, in a deep reservoir some distance west of the village. The

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inquest held on 2nd September following found the body decomposing, shewing no external marks of violence beyond an injury to one eye, and the lobes of the ears torn open. It was not therefore forwarded for surgical examination.

Diya! Tewaree, burkundaz of the *thannah*, twelve miles distant, on Thursday the 1st of September, had been appointed to make a preliminary enquiry into the matter, consequent on the hurried and imperfect information of the event given the same day by Panchoo the *gorahit* of the village. This burkundaz's letter No. 4, and his evidence before the darogah of 2nd idem, No. 13, show that he reached Mudunpoor on the evening of the 1st, when he at once apprehended the prisoner as suspected by the prosecutor, on which the prisoner confessed to having drowned the deceased for the sake of his ornaments,—all of which, consisting of two silver armlets, one silver amulet, and two gold earrings; he at the same time delivered up to the burkundaz in the presence of the deposing witnesses, Nos. 1, 3 and 4, as found concealed under some chaff at his doorway. On the darogah's arrival, the next day the 22nd idem, the prisoner duly repeated the same confessions before him in the presence of the attesting witnesses, and which he again fully confirmed before the deputy magistrate at Sherghotty. The ornaments have been duly identified as those worn by the deceased, and all the foregoing particulars are fully deposed to. Before this court the prisoner, revoking his confessions, set up no better defence than the inconsistent and unintelligible one that "he had accompanied the prosecutor during the search, and that on the discovery of the body, the prosecutor handing him the deceased's ornaments and not receiving them back, he had taken them to his own house, where, on the burkundaz's arrival, he had been apprehended. He had money transactions with the prosecutor, which had occasioned his ill-will." He called no witnesses.

The *futwa* of the law officer convicts the prisoner, on his own confessions, of the culpable homicide of the deceased, and declares him liable to punishment for the highest price of blood by "*Deyhut Mooghalsa*."

The prisoner's confessions, full and voluntary, appear to have been naturally enough elicited from him in the course of events, as the suspicions of his fellow villagers strengthened against him, with the discovery of the deceased's body stripped of its ornaments, after his having been last seen alive in the prisoner's company; so that the burkundaz Diya! Tewaree's timely arrival, and commendable conduct in following up the prisoner's verbal confessions to himself, by the prisoner's immediate production of the deceased's ornaments, consistently accounts for his full confession before the darogah in the presence of his fellow villagers the following day. The truth of all this stands confirmed throughout by the record itself, as well as the testimony of the

deposing witnesses before this court, whom there can be no reason to doubt, more especially when the prisoner's "idle pretence" before this court, as to his possession of the deceased's ornaments, only reasonably tends to confirm their evidence. The prisoner is a needy person, and occasionally borrowed money from the prosecutor, though ill-will on such account is improbable, and inconsistent on the prisoner's own shewing, for had it existed, it is not probable that the prosecutor in such case would so unaccountably have made over the deceased's ornaments to the prisoner, or that the prisoner would so unreservedly have accepted charge of them.

Nothing of an exculpatory character is to be found in the prisoner's confessions. The pitiless deed must have been as wickedly designed, as it was deliberately perpetrated. He enticed his helpless victim from the village to the high road outside, and thence by a bye-path to the reservoir where the body was found. This reservoir was one fathom deep in an out-of-the-way place, and at a sufficient distance from the village to be beyond observation, thus shewing the spot to have been carefully selected for such an act. He there deprived his victim of his ornaments, and then pushed him into the deep water, waiting, as he told the deputy magistrate, until he was drowned, when he proceeded homewards with his wretchedly acquired spoil. I am at a loss, therefore, to urge any thing in arrest of the extreme penalty of the law prescribed for such a crime, although proof of the prisoner's guilt thus rests solely on his confessions, which appear to me so strongly corroborated by every circumstance of the case. I convict the prisoner, on the 1st count, of the wilful murder of Gopal Noniar boy for the sake of his ornaments.

Remarks by the Nizamut Adawlut.—(Present : Messrs. A. Dick and B. J. Colvin).

Mr. A. Dick.—The prisoner was seen with the deceased, on the evening he was missed, going towards the reservoir, in which the body of deceased was next day found, stripped of the ornaments. The prisoner twice, nay three times, confessed to having pushed the deceased into the reservoir, after stripping him of the ornaments he had on ; and he delivered up the ornaments, concealed on his premises, and those ornaments have been proved to have belonged to the deceased. All these facts have been clearly substantiated. I would therefore convict the prisoner of murder, for the sake of ornaments, and sentence him to be hanged.

The Court request, that the sessions judge will direct the attention of the magistrate towards keeping alive in the minds of the inhabitants, through the police, the Circular Orders passed in regard to warning parents and relatives against letting out their children from home, with ornaments on their persons.

Mr. B. J. Colvin.—I concur in convicting the prisoner of the murder charged and in sentencing him to be hanged.

1854.

January 16.

Case of
NUNHUK
NONIAR.

PRESENT :

J. DUNBAR, Esq., *Judge*.

GOVERNMENT,

versus

Hooghly.

KADER SHIKARREE (No. 9.)

1854.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

January 16.

Case of
KADER SHI-
KARREE.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 7th January, 1854.

Prisoner convicted of having belonged to a gang of dacoits, and sentenced to transportation for life.

Remarks by the officiating additional sessions judge.—This is a commitment under the provisions of Act 24 of 1843, and the prisoner pleads guilty to the charge of having belonged to a gang of dacoits.

The approver's evidence establishes the crime against the prisoner, and proves that he belonged to an organized gang of dacoits, under the leadership of Kiramdi Sirdar, and committed a dacoity with them.

The prisoner confessed crime before the commissioner for the suppression of dacoity, and admitted that he committed seventeen dacoities under five Sirdars, and had been associated with gang robbers for the last twelve or fourteen years.

The prisoner's detailed confession embraces twenty-eight dacoities, documentary evidence of the occurrence of the major part of which will be found in the record of the trial; I believe both in the truth and voluntariness of this confession.

The prisoner repeats his plea of guilty before this court and makes no defence.

I convict the prisoner of having belonged to a gang of dacoits, on his own confession and the evidence of the approver, and propose that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.) The entirely voluntary character, of the prisoner's confessions before the commissioner for the suppression of dacoity, is established on evidence, and the prisoner himself pleads guilty. Of the twenty-eight dacoities mentioned in his detailed confession, nineteen have been verified from the records.

The Court sentence the prisoner to be imprisoned for life in transportation beyond sea.

PRESENT :

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND GUNGADHUR,

versus

JADOO CHOWKEEDAR (No. 1,) RUN MAHOMMED
(No. 2,) PAN MAHOMMED (No. 3,) AND MUHURUM
(No. 4, APPELLANT.)

Rungpore.

1854.

CRIME CHARGED.—Burglary in the house of the prosecutor Gungadhur, and stealing therefrom property value Rs. 29-4-3, and 2nd count, knowingly taking and having in possession, property acquired by the abovementioned crime.

CRIME ESTABLISHED.—Knowingly taking and having in possession property acquired by burglary.

Committing Officer.—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, sessions judge of Rungpore, on the 19th November, 1853.

Remarks by the sessions judge.—This was a burglary which occurred within the jurisdiction of thannah Durrovanee. It appears, the prosecutor was awoken by a noise and saw some men drawing a bundle towards the door; he says he recognized the four prisoners, but cannot state what they were doing; he raised the alarm and they made off; the neighbours coming he told them what had happened, mentioning the prisoners as the men to two of the witnesses, but the others all declare he never mentioned the names of any of them. The jemadar was making enquiries into another case on the spot; received the deposition of the prosecutor, and soon after, it being reported to him, that some men were supposed to be burying the stolen property, he went there and in a sugar-cane field dug up a *rezai*, *thalee* and *lota*, and then proceeded to search the prisoners' houses, but with the exception of Muhurum found nothing which could be recognised as the prosecutor's.

The prisoners plead not guilty throughout, and I did not consider the asserted recognition of the prisoners sufficient proof for conviction.

In (1) Jadoo's house only some twine was found, and his witnesses show he was in the habit of preparing and using it; that there is a quarrel between him and prosecutor and that he is respectable.

In (2) Run Mahommed's house only twine was found, and I did not consider that capable of recognition.

In (3) Pan Mahommed's house nothing was found.

In Muhurum's house a *thalee* was found, which was proved to

January 17.

Case of
MUHURUM
and others.

Prisoner convicted by the sessions judge of receiving stolen property, and sentenced to seven years' imprisonment. On appeal, the prisoner was acquitted.

1854.
January 17.
Case of
MUHURUM
and others.

be prosecutor's, and he was positively sworn to by witnesses Nos. 1, 2, 3, 4, as seen burying things in the spot where the jemadar found the prosecutor's *rezai*, &c. In his defence he denies and claims the property, but his witnesses all deny any knowledge of it and prove him to be a budmash, who has been in jail twice, a fact which is borne out by the record.

The law officer convicts No. 4, Muhurum on count two, and acquits the other three, in which I agree.

Sentence passed by the lower court.—Imprisonment with labor and irons for seven years.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Rakes.) I do not think the identification, of so common an utensil as a *thalee*, can be so implicitly relied on as to warrant the conviction of the prisoner solely on that fact. It is also a matter of suspicion, that the same witnesses should be able to prove prosecutor's case in all its various particulars. I am not satisfied with the evidence and therefore acquit the prisoner.

PRESENT :

H. T. RAIKES, Esq., *Judge*.

TRIAL No. 2.

BROJOMOHUN BANERJEA,

versus

MOHUNNATH (No. 1, APPELLANT,) SHEIKH BELDOOR
(No. 2.) AND SHEIKH SUFDER (No. 3.)

Sylhet.

TRIAL No. 3.

LALL KHAN,

1854.

versus

January 17.
Case of
MOHUNNATH.

MOHUNNATH (No. 5, APPELLANT,) SHEIKH BELDOOR
(No. 6,) AND URJOONNATH (No. 7.)

CRIME CHARGED.—*Trial No. 2*, 1st count, prisoners Nos. 1, 2 and 3, burglary and stolen property to the value of Co.'s Rs. 301-4; 2nd count, prisoners Nos. 1, 2 and 4,* knowingly having in possession the property obtained by the above burglary, and 3rd count, all the prisoners with privity to the crimes charged in the 1st and 2nd counts. *Trial No. 3*, 1st count, burglary and stolen property to the value of Co.'s Rs. 7-2-6; 2nd count, knowingly having in possession the stolen property obtained by the above burglary, and 3rd count, privity to the crimes charged in the 1st and 2nd counts.

Prisoner committed on eight separate charges of burglary, convicted by the sessions judge on two, and sentenced to seven years' imprisonment. Appeal rejected.

* Acquitted by the lower court.

1854.

January 17.

Case of
MOHUNNATH.

CRIME ESTABLISHED.—*Trial No. 2*, prisoner No. 1, knowingly being in possession of property stolen by burglary and theft; prisoner No. 2, privy and being an accessory after the fact of burglary and theft, and prisoner No. 3, privy and knowingly having in possession the property stolen by burglary. *Trial No. 3*, prisoners Nos. 5 and 6, the same as in trial No. 2, and prisoner No. 7, privy to burglary and concealment of property stolen by burglary.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 18th November, 1853.

Remarks by the sessions judge in trial No. 2.—This and the following eight cases* are all more or less connected with one another, and I shall, therefore, give a concise history of the cases in general, and then confine myself to the evidence in each.

In the month of August last, a burglary and theft of property to the value of about 300 Rs. took place in the house of prosecutor, but having no suspicions of any one, he simply deposed the circumstance at the thanah. In September, however, one Gulic, *dulal*, offered him (the prosecutor) some cloths for sale, which he at once recognized as part of the property stolen from his house. He sent therefore for the police, and the *dulal* stated that they had been sold to him by one Jaloomeah in the presence of witnesses. This fact being established, Jaloomeah was apprehended and declared that he had purchased them, in the presence of witnesses, from the prisoner Mohunnath (prisoner No. 1) a syce in the service of the Rev. Mr. Pryse. Mohunnath was apprehended, but denied all knowledge of the matter. His house, however, was searched and property was pointed out by his connexions as having been concealed by him; other parties were apprehended who made various statements, shewing their participation in the robbery, and the eight other cases referred to at the beginning of this abstract were brought to light.

In the present case, the sale by the prisoner Mohunnath of the stolen clothes to Jaloomeah is satisfactorily established, and Mohunnath has no evidence to rebut the charge. He merely put in a long petition, charging the darogah with corrupt practices and with ill-feeling to himself, but he named no witnesses before the magistrate. Sheikh Beldoor (prisoner No. 2,) made a confession before the darogah and the magistrate to the effect, that he lived in Mr. Pryse's stable, and that the prisoners 1 and 3 committed the various robberies, alluded to above, and brought and concealed the stolen articles in straw in the stable; that they

* The prisoner Mohunnath in trials Nos. 1 and 2, has only appealed.

1854.

January 17.

Case of
MOHUNNATH.

afterwards took away the property, and now charged him with participation in the theft, because he declined to receive any of the stolen goods.

Sheikh Sufdur stated before the darogah, that he had not committed the thefts and he, afterwards before the magistrate, stated that Mohunnath had given him a *hookah* as part payment of a debt. This *hookah* was proved to be stolen, and will hereafter be referred to in case 8.

Musst. Gunga, prisoner No. 4, stated that she had seen Beldoor (prisoner No. 2) and others throw various articles into her husband's tank, but she denied all knowledge of the theft.

The assessors convict all the prisoners of privity to burglary, and of having stolen property in their possession, knowing it to have been stolen, but from this verdict I dissent. I consider that the prisoner No. 1, should be convicted of being in possession of property acquired by burglary, knowing it to have been so acquired. The prisoner No. 2, I convict, on his own confessions, which are proved to have been voluntarily made, of privity and being an accessory after the fact, because, he helped the prisoners 1 and 3 to conceal their booty. Sheikh Sufdur I convict in this case of privity only, while Gunga I acquit. A *tuslah*, part of the property, was found in the tank pointed out by her, but she denies that she knew that it was stolen. There is no other evidence against her.

Remarks by the sessions judge in trial No. 3.—The house of Lall Khan was burglariously entered in June last, and property stolen, but no suspicions attached to any parties. On searching Mohunnath's house, property was pointed out by the prisoner Urjoonnath (prisoner No. 7,) as having been concealed by Mohunnath (prisoner No. 5,) and as articles belonging to Lall Khan were found. The prisoner Mohunnath stated that he could not account for the presence of two *kumberbunds*, in the bundle pointed out, but that a *saree* therein was his own property. This, however, was proved to be the property of prosecutor, and the prisoner could not say from whom he had purchased it.

Sheikh Beldoor confesses to privity and being an accessory as stated in case No. 1.

The assessors find Mohunnath guilty of burglary and theft, Beldoor of privity and being an accessory after the fact, and acquit Urjoonnath and Gunga; but although I concur in their verdict in regard to Beldoor and Gunga, I dissent from them in regard to Mohunnath and Urjoonnath. There is no evidence to show that Mohunnath committed the burglary, but he is proved to be in possession of the stolen property. Urjoonnath is his brother-in-law and pointed out the bundle, which he says Mohunnath concealed the previous evening, and he assigns no reason for the concealment, so that it must be presumed that he knew it was stolen.

Sentence passed by the lower court.—The prisoner Mohunnath in trials Nos. 1 and 2, to be imprisoned with labor and irons for seven years, being a consolidated sentence.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) •The prisoner was charged with being concerned in eight burglaries, and property belonging to two persons, namely, Brojomohun and Lall Khan, whose houses had been so entered, was traced to his possession.

The sessions judge's *roobakarees* advert to the prisoners having been convicted by him in three of these cases, but the English statements of convictions, for November last, clearly shew that the prisoner was acquitted in the case in which Sheik Ahamud Ally was prosecutor, and convicted only in those of Brojomohun and Lall Khan. There seems to me no reason for interfering with the convictions in these two cases, but I reduce the punishment awarded by the sessions judge to four years, which seems to me, under the circumstances, sufficient.

1854.

January 17.

Case of
MOHUNNATH.

PRESENT:

H. T. RAIKES, Esq., Judge.

GOVERNMENT AND NITTANUND DALGUR,

versus

KHOOSIAL SINGH SEPOY (No. 41,) OMROW SINGH SEPOY (No. 42,) HONOMAN PAREY ALIAS HONOMAN SINGH SEPOY (No. 43,) AND RUGHOOBEER OPADAYO SEPOY (No. 44.)

Sylhet.

1854.

January 17.

Case of
KHOOSIAL
SING and
others.

CRIME CHARGED.—1st count, burglary in the house of the informant, and theft of property to the value of company's rupees 302-2; 2nd count, with being accomplices to the above crime; 3rd count, knowingly having in their possession the property obtained by the above burglary.

CRIME ESTABLISHED.—No. 41, burglary and theft, and of knowingly having stolen property in his possession. Nos. 42 to 44 being accomplices in burglary and theft.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 21st November, 1853.

Remarks by the sessions judge.—The prosecutor states that on the 8th of November, he locked up one hundred shields in his godown, and went to sleep, but that arising in the morning he discovered the lock broken off and the shields gone; that he immediately gave notice of the robbery at the thannah, and that

Four sepoys convicted, two as principals and two as accomplices in burglary and theft of a number of shields, and sentenced the former to four years, and the latter to two years' imprisonment. Appeal rejected.

1854.

January 17.

Case of
KHOOSIAL
SING and
others.

about 9 o'clock the next morning he heard, that the greater part of the shields had been recovered in the Lines of the 38th L. I. Ojoodyah Misser Sepoy, witness, states that at about 3 in the morning, the prisoner Khoosial Singh called to him and said, he had brought some shields, and that on opening the doof the four prisoners produced the eighty-nine shields. That on his asking Khoosial where he had got all the shields at such an hour, he stated he had given advances for them and that they had with great trouble obtained them. That in the morning he reported the circumstance to his havildar and that Khoosial Singh entreated him to save his honour.

Mussumat Sofyah, wife of Ojoodyah Misser, bears out her husband's statement as to the shields being brought by four men. She only, however, professes to have recognised Khoosial Singh; she was unacquainted with the others and did not recognise.

The prosecutor's padlock, which was duly sworn to, was delivered to Ojoodyah by Khoosial Singh together with the shields, but with a key that did not belong to the prosecutor. The havildar confirms part of the deposition of Ojoodyah Misser.

Before the darogah and magistrate Khoosial Singh stated, that he had gone out early to ease himself, and saw three men bringing the shields, and that on his speaking to them they ran away and that his calls brought forth Omrow Singh and Honoman Singh, who assisted him in taking the shields into Ojoodyah Misser's house. He repeated the same story before this court, and called witnesses to prove that he had not left the Lines, but this they failed to do.

Omrow Singh and Honoman Parey, on the 9th November, stated that they had been called by Khoosial Singh, under the circumstances narrated by him, but on the 11th they added, that Khoosial Singh had committed the robbery and had shewn to them the lock and key. They called witnesses to prove that they had not left the Lines, but this they failed to do.

Rughoobeer Singh simply denied all participation in the robbery, but he did not attempt to state where he was, nor did he call any witnesses to his defence.

Ojoodyah Misser Sepoy swears, most positively, to his having been one of the men who brought the shields to his house and he reported his name to his havildar, and there is no reason for doubting his guilt.

The assessors convict all the prisoners and, in consideration of Khoosial Singh's having evidently arranged the whole robbery, I have convicted him as principal and given him a heavier punishment than the other prisoners.

Sentence passed by the lower court.—Prisoner No. 41, to (4) four years' imprisonment with labor in irons, and Nos. 42 to 44 each (2) two years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T.

Raikes.)^a The admissions of three of the prisoners corroborate the statement of the principal witness, Ojoodyah Singh, to the extent that they brought the shields to his house, and there is no reason whatever to doubt that his version of the case is strictly true. As there is no doubt that the prosecutor's house was broken into, on the same night and the shields stolen therefrom, it is impossible to suppress the presumption that the prisoners were the actual thieves, and this they have been unable to rebut by supporting in any way the defence set up by them.

In appeal, they have merely reiterated their previous defence, coupled with what appear to be very malicious insinuations against the character and virtue of the principal witness's wife, and the assertion that, as they were Brahmins, it is impossible they could have stolen shields made of leather. I confirm the conviction and sentence, and reject the appeal.

1854.

January 17.

Case of
KHOOSIAL
SING and
others.

PRESENT :

J. DUNBAR, Esq., *Judge*.

GOVERNMENT,

versus

NOFUR BAGDEE.

Hooghly.

1854.

CRIME CHARGED.—1st count, dacoities attended with wounding of Gooroo Churn and Kishto, Chowkeedars, in the shops of Kaysubchunder Missry, Obhiram Mondul, Seram, Mohendro and Ramchand Loho at Ramjibunpore, and plundering therefrom property to the amount of Co.'s Rs. 3,676-3-5 ; 2nd count, with having belonged to a gang of dacoits.

January 19.

Case of
NOFUR BAG-
DEE.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Prisoner convicted of dacoity and of having belonged to a gang of dacoits, and sentenced to transportation for life.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 4th January, 1854.

Remarks by the officiating additional sessions judge.—On the night of the 18th May last, a dacoity was committed in the bazar of Ramjibunpore, in which three shops were attacked and plundered in succession, and property to a large amount carried off. This fact will be proved by the persons indicated in the

* Witnesses Nos. margin.*

1, 3, 4, 5, 10.

The prisoner Nofur Bagdee was severely wounded on the occasion, by the villagers who pursued the dacoits on their retreat from the premises, and exhibited two large sword cuts on his person when arrested, about four months afterwards. His apprehension was effected through the instrumentality of an approver,† who learned the fact

† Witness No. 11.

1854.

January 19.

Case of
NORUN BAG-
DEE.

of his having been present at and wounded in the dacoity from one Mudhu Bagdee, an uncle of the prisoner and one of the witness's former associates.

The prisoner admitted his complicity in the dacoity before the deputy magistrate, under the commissioner for the suppression of dacoity with full particulars, and made a detailed confession of having participated in the commission of several other dacoities; these records are verified by witnesses marginally*
* Nos. 6, 7. noticed.

The prisoner's confessions detailed the dacoity charged, his wounds and escape, his sufferings and privations, his wanderings and mode of living, his eventual arrest and his complicity in six dacoities committed by organised gangs under formal leaders. He recanted both these confessions after having freely and voluntarily made them.

Before this court, the prisoner pleads not guilty, repudiates his confessions and calls witnesses to prove that he gains an honest livelihood. Two persons‡ were examined on his behalf, but they disclaimed all knowledge of his means and manner of life.

I convict the prisoner on both counts of the charge, on the evidence of the approver, witness No. 11, and his own confessions and recommend that he be sentenced to transportation for life with labor in irons.

Remarks by the Nizamat Adawlut.—(Present: Mr. J. Dunbar.) The prisoner confessed before the commissioner for the suppression of dacoity, that he had been engaged in fourteen dacoities, giving a detailed statement of each. Of the entirely voluntary character of this confession and of its general truthfulness, there is no reason to doubt, both because it is duly attested by the subscribing witnesses, and because the actual occurrence of nine of the dacoities has been verified from former records, while the sword cuts on the prisoner's body afford unquestionable proof of the truth of the approver's statement, and the prisoner's own admissions in regard to the Ramjibunpore case.

I concur in the conviction and sentence the prisoner to be imprisoned for life, with labor in irons, in transportation beyond sea.

PRESENT :

J. DUNBAR, Esq., *Judge.*

GOVERNMENT,

versus

BEESHOO MUNDUL MOOSULMAN.

Hooghly.

1854.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

January 20.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 7th January, 1854.

Case of
BEESHOO
MUNDUL
MOOSULMAN.

Remarks by the additional sessions judge.—This is a commitment under the provisions of Act XXIV. of 1843, and the prisoner pleads guilty to the charge of having belonged to a gang of dacoits.

Prisoner convicted of having belonged to a gang of dacoits and sentenced to transportation for life.

The approver's evidence establishes the crime against the prisoner and proves, that he belonged to an organized gang of dacoits, under the leadership of Kiramdi Sirdar and committed two dacoities with them.

The prisoner confessed crime before the commissioner for the suppression of dacoity, and admitted that he committed eight dacoities under four sirdars.

The prisoner's detailed confession embraces twenty-five dacoities, committed by different gangs under different sirdars, documentary evidence of the occurrence of the major part of which will be found in the record of the trial. I believe both in the truth and voluntariness of this confession.

The prisoner repeats his plea of guilty before this court and makes no defence.

I convict the prisoner of having belonged to a gang of dacoits, on his own confession and the evidence of the approver, and propose that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—A general confession and a detailed one, with full particulars of the various dacoities, in which the prisoner has been concerned, made on different dates, are duly sworn to by the attesting witnesses—Of the twenty-five dacoities mentioned by him, the occurrence of sixteen has been verified, and the non-verification of the remainder is sufficiently accounted for, one having been only an attempt, and eight being river dacoities, which are seldom reported. The prisoner, moreover, pleads guilty and admits having done business in company with the approver.

Concurring in the conviction, the court sentence the prisoner to be imprisoned for life, with labor in irons, in transportation beyond sea.

PRESENT :

J. DUNBAR, Esq., *Judge.*B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

NUSSEERUDEEN.

24-Pergun-
nahs.

1854.

January 20.

Case of
NUSSEERUD-
DEEN.Prisoner con-
victed of wilful
murder and
sentenced to
suffer death.

CRIME CHARGED.—1st count, wilful murder of Ruhmut-oollah, a boy of ten years of age; 2nd count, severely wounding one Muhurum Beebee, with intent to murder her.

Committing Officer.—Mr. Edward Jenkins, magistrate of Howrah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 13th December, 1853.

Remarks by the officiating additional sessions judge.—The prisoner Nusseeruddeen Sheikh is charged, firstly with the wilful murder of Ruhmutoolah, a boy of ten years of age, son of the witness No. 1, and secondly, with severely wounding Muhurum Beebee, witness No. 1, with intent to kill, and pleads not guilty to both charges.

The facts of the case are these, and will be found proved by the recorded testimony of the witnesses, noted

* Nos. 1, 2.

in the margin.* Muhurum Beebee was a widow and contracted a second marriage with the prisoner. On the day of the murder, Muhurum and her mother Gunah Bewah, (witness No. 2,) put out some wearing apparel, belonging to the former, in the sun to air. The prisoner saw the articles and enquired whose they were. Muhurum told him they were her's, the gift of her late husband. Discrediting the information and suspecting that the clothes were the present of lovers, he quarrelled with his wife and left the house. On his return he asked for food, which Muhurum placed before him. He wished her to join him in the meal, which she refused on the ground of his unjust suspicions. He then asked for a *dao* and after sharpening it with a stone, again left the house without eating. He returned about 10 at night, and failing a second time to induce her to eat with him went to bed without food. Muhurum and he slept together and Gunah a short distance apart with the boy, Ruhmutoolah, lying between them. About midnight, Muhurum was heard to scream and Ruhmutoolah woke up Gunah, saying that the prisoner was murdering his mother. The old woman went to the assistance of her daughter, whom she found bleeding and motionless, and the prisoner took that opportunity of carrying Ruhmutoolah outside and literally hacking him to pieces.

The boy died on the spot, and the prisoner ran off with the *dao* in his hand. 1854.

* Witness No. 11. In his flight, he was recognized by one person,* and when search was made for him at his house about the same time by another,† he was found absent, and said to have absconded after committing murder, proof of which was abundantly manifest to the former on his at once repairing to the prisoner's abode. January 20. Case of NUSSEERUD-DEEN.

† Witness No. 12. A reward of 50 Rs. was offered for the apprehension of the prisoner and awarded to the person indicated in the margin,‡ who arrested and made him over to the custody of the police.

§ Witness No. 7. The evidence of the civil surgeon§ goes to show that Muhurum Beebee was admitted into hospital with two severe wounds on the face, involving a frightful amount of injury, causing great disfigurement and entailing the probable loss of one eye. One extended through the upper part of the left ear across the temple, dividing the temporal artery and penetrating the bone across the lower part of the eye to the bridge of the nose, and the other ranged from the lower part of the same ear across and completely through the cheek to the upper lip. It also sets forth in terms that horribly, that the boy Ruhmutoollah, was literally hacked to death.

The darogah held an inquest on the body of the deceased Ruhmutoollah, from which it will appear that there were three severe wounds exhibited on the person, one on the face, another across the back of the head and another in the abdomen, through which the intestines protruded. This record as well as that of the statement made by the prisoner before the magistrate will || Witnesses Nos. be found attested by the evidence of the persons,|| marginally noticed.

This latter document corresponds, in several particulars, with the statements made by Muhurum and her mother Gunah Bewah. It is a clear admission of the prisoner's suspicion of his wife's fidelity, and his determination to kill her on that account in the attack he made, which he acknowledges having perpetrated with the *dao*. It repudiates the murder of the boy, Ruhmutoollah, and ascribes the act to the old woman Gunah, assigning as a motive her avowed inability to provide for the child now. The prisoner concludes this statement by alleging that he concealed himself for two days, at the end of which time, supposing that his wife was dead, he was about delivering himself up to justice, when he was arrested by the witness No. 3.

The prisoner denied the charge, when first interrogated by the police, but the darogah states in his final report that he made the above admissions, when about to be forwarded to the magistrate, which, however, the darogah did not commit to paper

The prisoner repudiates the charge of murdering the boy
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Case of
NUSSEERUDDIN.
DEEN.

Ruhmutoollah, before this court, but pleads guilty to the cutting and maiming of his wife Muhurum, for suspected infidelity. He disavows his admissions before the magistrate, and affirms that he has no witnesses to call.

The *futwa* of the law officer convicts the prisoner Nusseer-uddeen Sheikh, of the wilful murder of the boy Ruhmutoollah, on violent presumption, and of severely wounding Muhurum Beebee with intent to kill, on full legal proof, and declares him liable to discretionary punishment extending to death by *akoobut*.

I have no doubt of the prisoner's guilt. His admissions before the magistrate and the evidence recorded on the trial conclusively establish his criminality, and prove that he has committed one cruel and reckless murder, and attempted another by making a felonious assault with a deadly weapon, which he intended to be fatal to his unoffending victim. He has evinced a spirit of fiendish atrocity beyond the reach of pity, and merits a doom of pains and penalties beyond the pale of mercy. I concur with the law officer in his conviction, and propose that he be sentenced to suffer death.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and B. J. Colvin.)

Mr. J. Dunbar.—This is a case of cruel and savage murder. The prisoner admits that he intended to kill his wife, and it is probable that he would have effected his purpose, had not the unfortunate boy drawn the murderer's fury upon himself. I concur in the conviction, and in the capital sentence recommended by the sessions judge.

Mr. B. J. Colvin.—I concur in the conviction and in the capital sentence proposed.

PRESENT:

J. DUNBAR, Esq., *Judge*.

GOVERNMENT,

versus

ROOPCHAND GHOSE ALIAS HOOSKA GOWALLA.

Hooghly.

CRIME CHARGED.—Having belonged to a gang of dacoits.

1854.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity—Hooghly.

January 20.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 5th January, 1854.

Case of
ROOPCHAND
GHOSE alias
HOOSKA Go-
WALLA.

Remarks by the officiating additional sessions judge.—This is a commitment under the provisions of Act XXIV. of 1843, and the prisoner pleads guilty to the charge of having belonged to a gang of dacoits.

Prisoner con-
victed of hav-
ing belonged
to a gang of
dacoits and
sentenced to
transportation
for life.

* Witnesses 1, 2, 3. The approvers' evidence noted in the margin,* establishes the crime against the prisoner and proves his complicity in several dacoities with organised gangs.

The prisoner confessed crime before the commissioner for the suppression of dacoity, and admitted that he had committed twenty-six dacoities, under fifteen leaders, and had been associated with gang robberies since the early age of sixteen.

The prisoner's detailed confession embraces fifty dacoities, documentary evidence of the occurrence of many of which will be found in the record of the trial. I believe both in the truth and voluntariness of this confession.

The prisoner repeats his plea of guilty before this court and makes no defence.

I convict the prisoner of having belonged to a gang of dacoits, on his own confession and the evidence of the approvers, and propose that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The prisoner was named in the original confessions of all three approvers, as having been concerned with them in different dacoities. They now swear to the fact and their depositions, together with the prisoner's own free and full admissions, duly attested, prove beyond question, that his adult life has been passed in the perpetration of a succession of dacoities.

The court convict him of the crime charged and sentence him to imprisonment for life, with labor in irons, in transportation beyond sea.

PRESENT:

SIR R. BARLOW, BART,—*Judge.*

GOVERNMENT,

versus

Rungpore.

NUSEER SIKKAR.

1854.

January 20.

Case of
NUSEER SIK-
KAR.

Prisoner con-
victed of per-
jury regarding
his parentage
in order to
give greater
weight to his
evidence, and
sentenced by
the sessions
judge to three
years' impri-
sonment. Ap-
peal rejected.

CRIME CHARGED.—Perjury, in having on the 8th September, 1853, deposed under a solemn declaration taken instead of an oath, before the uncovenanted deputy collector of Bograh, "that Deanutoollah Sirkar, deceased, was his father; that he was not related in any way and had no connection with Deanoo Mundle then present." Such deposition being false and having been intentionally and deliberately made, on a point material to the

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. W. Bell, sessions judge of Rungpore, on the 6th October, 1853.

Remarks by the sessions judge.—This was a case of perjury; the prisoner was a witness in a summary suit before the deputy collector, called on the defence made by Deanoo Mundle. When examined by the deputy collector, he first stated that he was the son of Deanutoollah, deceased, and denied that he was in any way related or connected with Deanoo, the defendant in the case. Afterwards he confessed before the deputy collector that his statement was false, and that he was the son of Deanoo. His motive was evidently to obtain greater credit to the testimony given by him in the case. In weighing the value of his evidence, it was essential to know in what relation he stood to the defendant, and by making a false deposition on this point, he has made himself liable to the penalties of perjury. The case is clearly established by the witnesses before the court, and the confession before the deputy collector, proved before the sessions court; he admits the fact and says that he is a fool and therefore made the statement. He produces three witnesses, who all declare they all know him well and that he is never silly nor ill. The witnesses for the prosecutor all prove, that he was perfectly well and sensible at the time of giving his deposition.

The law officer returns a verdict of guilty, in which I agree.

Sentence passed by the lower court.—Imprisonment with labor, without irons, for three (3) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) There is no doubt of the prisoner's guilt. His object was to conceal his connexion with Deanoo Mundle, in order to give his evidence greater weight in favor of the defendant in the summary suit. I confirm the sessions judge's sentence.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT AND MYENDEE GATCHOO,

versus

JADOO NUSHA (No. 2.) AND BONCHA NUSHA (No. 3.)

Rungpore.

1854.

January 20.

Case of
JADOO NU-
SHA and BON-
CHA NUSHA.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor and plundering therefrom property valued at Co.'s Rs. 48-13; 2nd count, being accomplices, aiding and abetting in the commission of the said crime, and 3rd count, having in their possession property acquired by the said dacoity, knowing it to have been so obtained.

CRIME ESTABLISHED.—Being accomplices, aiding and abetting in the commission of dacoity.

Committing Officer.—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. W. Bell, sessions judge of Rungpore, on the 5th October, 1853.

Remarks by the sessions judge.—This was a simple case of dacoity, which occurred in the jurisdiction of thannah Gobind-gunge, on the 11th of July last.

The prosecutor, Myendee Gatchoo, states that his house was forcibly broken into in the night, by some seventeen or eighteen men, whom he cannot recognize, who beat him and demanded his money, and that they broke open a box and went off with the property; that his screams brought the neighbours, who pursued the dacoits and arrested Jadoo, No. 2, with the property, Nos. 1 and 2.

The chowkeedar, No. 1, and prosecutor's uncle, No. 4, gave intimation at the thannah. The prisoner confessed, implicating No. 2, Boncha, and on searching his house, property, No. 3, was found.

Prosecutor swears to all the property produced as his, and did not know the prisoners before.

Witness, No. 1, Bhursah, the chowkeedar, states that on the night of the occurrence he heard the noise at the prosecutor's house and, on proceeding there, saw some sixteen or seventeen men running away; one of them tripped over a ridge in a field, and fell and he and witnesses, 2 and 3, arrested him. The witnesses saw the marks of beating on the prosecutor, and heard the prisoner acknowledge the property was prosecutor's. He gave intimation at the thannah.

Witnesses, Nos. 2 and 3, heard the noise at the prosecutor's, and going there, saw some seventeen or eighteen men running away, they pursued them, and Jadoo tripping, fell, when they and

Two prisoners convicted by the sessions judge as accomplices in dacoity, and sentenced to ten years' imprisonment. In appeal, one was acquitted.

1854. the witness, No. 1, arrested him; he immediately confessed, implicating Boncha.

January 20. Witnesses, Nos. 2 and 3, heard the noise at the prosecutor's, and going there saw seventeen or eighteen men running away, they pursued them and Jadoo tripping, fell, when they and the witness, No. 1, arrested him; he immediately confessed, implicating Boncha.

Case of
JADOO NU-
SHA and BON-
CHA NUSHA.

Witness, No. 4, Mazeerah, lives in the same house as prosecutor, but on the night of the occurrence was at the zemindar's cutcherry about quarter of coss off. Heard the noise in the bustee, and returning home found the neighbours with Jadoo, and heard the story, saw the marks of beating and ill-usage upon prosecutor's person and recognizes the property found as prosecutor's. He was present when Boncha's house was searched, and prosecutor's property, No. 3, found there.

Nos. 5, 6, 7, sooruthal witnesses.

Nos. 2, 8, 9, 10, witnesses to the mofussil confession of Jadoo, which was free and uninfluenced.

Nos. 11, 12, 13, witnesses to the sudder confession of Jadoo, which was voluntary and unbiased.

Nos. 2, 3, 4, witnesses to finding the property, Nos. 1 and 2, upon the prisoner Jadoo (No. 2.)

Nos. 2, 4, 14, 15 and 16 witnesses to finding the property, No. 3, in the house of Boncha (No. 3.)

Nos. 2, 3, 4, 17, witnesses to the identity of the property, Nos. 1, 2, and 3, produced.

Prisoner, No. 2, Jadoo, denies; declares he went to fetch his mother-in-law to see his son, who was ill, and that he was seized, &c. but does not offer any proof of the truth of his story; before the magistrate and darogah he confessed to having gone with the dacoits, but denied having carried off any thing: before the court he produces two witnesses, Nos. 25 and 27, who say that formerly he was respectable.

Prisoner, No. 3, Boncha, denies throughout and declares the property to be his own, he produced ten witnesses.

Witness, No. 18, Aman, knows where the prisoner was during the day, but nothing about him at night.

Witness, No. 19, Nukee, does not know where he was at night, but saw him in the evening.

Witness, No. 29, Alumdee, does not know when the dacoity was. The prisoner remained in his house one night, but he cannot say when.

Witness, No. 30, Porah, cannot specify the night, but remembers that he and Boncha one night slept at Alumdee's house.

Witness, No. 21, Muttee, does not recognize the cloth, No. 3.

Witness, No. 22, Nukee Akhund, does not recognize the cloth, No. 3.

Witness, No. 23, Doobrajeah, knows nothing.

Witness, Tajoo, declares that he knows Boncha had a piece of cloth burnt in three places and recognizes No. 3. He is uncle to the prisoner.

No. 28, Atoo and No. 20, Munde, know that on one occasion before, the prisoner Boncha's house was searched in a case of dacoity, but that nothing was found.

I tried the case alone under Act XXIV. of 1843, and convicted both the prisoners of being accomplices in the dacoity.

Sentence passed by the lower court.—Each of the prisoners to be imprisoned with labor and irons for ten (10) years.

Remarks by the Nizamut Adawlut.—(Present: Sir Robert Barlow, Bart.) The Prisoner Jadoo was seized in the act of running off with property; he also confessed in the mofussil and before the magistrate. These facts are proved by the evidence of the chowkeedar and the villagers. It is also shewn that the prosecutor was beaten and ill-treated. I see no reason to interfere with his sentence.

The prisoner Boncha denied throughout; the only evidence against him is the production of a piece of cloth, the third day after the dacoity, from his house, which he as well as the prosecutor claims. Both have adduced evidence to prove their respective rights to it.

The evidence is not sufficient for conviction, I acquit and release him.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT,

versus

IN TRIAL No. 1, DEBA DASS ALIAS BHUGWAN DASS (No. 1.) AND BULDEO DASS (No. 2.)

CRIME CHARGED.—No. 1, 1st count, knowingly possessing instruments with intent to forge coin. No. 2, 1st count, having knowingly uttered three pieces of counterfeit coin to Kanduree, and disposed of them to his own use, and 2nd count, knowingly possessing three pieces of counterfeit coin.

CRIME ESTABLISHED.—No. 1, knowingly possessing instruments with intent to forge coin, and No. 2, having knowingly uttered three pieces of counterfeit coin to Kanduree, and disposed of them to his own use.

Committing Officer.—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, sessions judge of Rungpore, on the 7th November, 1853.

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Case of
JADOO NU-
SHA and BON-
CHA NUSHA.

Rungpore.

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Case of
DEBA DASS
alias BHUG-
WAN DASS
and another.

Prisoner convicted by the sessions judge of knowingly possessing instruments with

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Case of
DEBA DASS
alias BHUG-
WAN DASS
and another.

intent to forge
coin, acquitted
in this case ;
but convicted
of uttering
counterfeit
coin in the
following case.

Consolidated
sentence of ten
years' passed
by the sessions
judge in both
cases, reduced
to seven years.

Remarks by the sessions judge.—It was proved, by the evidence of the witnesses in this case, that the prisoner Buldeo (2) went to the shop of Kanduree, and offered to exchange pice for rupees at the rate of eighteen gundahs to the rupee ; she gave him three rupees, which he examined and handled for some time and then gave her back the same number of coins, stating that Company's rupees were not current amongst his people and that he wanted siccas ; these she had not, and he went away, and she observing that the rupees were very dirty, whereas hers were clean, called the chowkeedar, who examined them and pronounced them to be bad, and immediately raised the hue and cry. The boy was arrested and at once confessed, producing the three rupees ; he said the prisoner Deba Dass, was in the habit of coining, and that he instructed him to pass the money, upon which Deba Dass was arrested, and upon searching his saddle, the implements of his trade, as coiner, were found. The prisoner, No. 2, Buldeo confessed before the magistrate.

Before the sessions court both prisoners deny, and Buldeo repudiates his confessions, but they can offer no defence beyond a denial.

The law officer convicts both prisoners upon the 1st count on which each is committed. I agree and sentence No. 2, to light punishment in consequence of his youth, and defer sentence upon No. 1, Deba Dass, until his trial for passing forged coins, Calendar No. 2, is concluded.

Sentence passed by the lower court.—Sentence of No. 1 is stated in the following case, and No. 2 to be imprisoned without irons for three years and to pay a fine of (50) fifty rupees within thirty days, or in default of payment to labor until the fine be paid, or the term of sentence expires.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.) The boy Buldeo is clearly proved guilty on the 1st count charged against him, as well by the evidence of the witnesses, who saw him passing the counterfeit coin, as by his own confession which is duly attested. In regard to him, therefore, the court see no cause for interference. The evidence does not suffice, however, to convict Deba Dass of the crime charged against him. It consists simply in the finding certain articles in his possession, which it is presumed, he kept with intent to forge coin, but the articles are such as a man might have with no such evil intention, and the confession of the boy, Baldeo, however good against himself, cannot be received as evidence against Deba Dass. I accordingly acquit the latter.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT,

versus

IN TRIAL NO. 2, DEBA DASS ALIAS BHUGWAN DASS
(No. 1.)

Rungpore.

CRIME CHARGED.—1st count, having knowingly uttered thirteen pieces of counterfeit coin to Ameerun Bewah and disposed of them to his own use, and 2nd count, knowingly possessing thirteen pieces of counterfeit coin.

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CRIME ESTABLISHED.—Having knowingly uttered thirteen pieces of counterfeit coin to Ameerun Bewah, and disposed of them to his own use.

Case of
DEBA DASS
alias BHUG-
WAN DASS.

Committing Officer.—Mr. A. W. Russell, officiating magistrate of Rungpore.

See preceding
case.

Tried before Mr. William Bell, sessions judge of Rungpore, on the 7th November, 1853.

Remarks by the sessions judge.—It is clearly established by the evidence of the witnesses, that the prisoner went to Ameerun's shop and wanted to exchange pice for rupees; she gave him thirteen rupees all that she had, and he said he wanted siccas, not Company's, which she had not, and he gave her thirteen pieces of money back; the next day she heard he was arrested on a charge of coining and examined her money, which she found bad. She therefore proceeded to the thannah and told her story.

The law officer convicts on the 1st count and I agree, and pass a consolidated sentence in this and the preceding trial of ten years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present Mr. J. Dunbar.) The charge, of having knowingly uttered thirteen pieces of counterfeit coin, is established against the prisoner. Had he been charged with possessing instruments intended to be used in forging coin, in connection with this case, the charge would probably have been established; as the fact of the prisoner's having passed certain counterfeit rupees, would have afforded strong presumption, that the instruments so found, had been made use of in this way.

The sessions judge passed a consolidated sentence on conviction both in this and in the preceding case, but as I have acquitted the prisoner in one, I reduce the sentence to imprisonment with labor in irons for seven years.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

LULAH BURNEWAR AND GOVERNMENT,

Behar.

versus

GOOHUN BURNEWAR.

1854.

CRIME CHARGED.—Burglary and theft of property, valued at Rs. 172, by breaking lock of the house of the prosecutor.

CRIME ESTABLISHED.—Burglary and theft of property valued at Rs. 172, by breaking lock of the house of the prosecutor.

Committing Officer.—Mr. A. G. Wilson, deputy magistrate of Nowadah with the powers of a magistrate.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 12th September, 1853.

Remarks by the sessions judge.—During the night of 31st July last, robbers made a burglarious entry into the prosecutor's house and breaking open the lock of an inner door, succeeded in abstracting articles of value, when the prosecutor awaking, gave the alarm and admitting the four eye-witnesses, neighbours and the sole reason chowkeedar of the village, by the entrance door, they found, as for the commitment and the enhancement of a prisoner's sentence; the bare assertion of the prosecutor as to the value is not sufficient evidence. Sentence reduced to two years.

The prisoner, an able-bodied young man, pleading "not guilty" yet acknowledging the occurrence of the burglary, has always pretended that he was passing the night at his uncle's, whom he had visited for the purpose of obtaining a loan from him of three rupees by pledging some ornaments, and with the self-damaging addition before this court, that he had had a similar transaction before with his uncle, about which they had disputed, and which had caused this accusation. He has never called any witnesses.

The *futwa* of the law officer convicts the prisoner of burglary and theft, and declares him liable to discretionary punishment by *tazeer*.

The case is a plain one, conclusively brought home against the prisoner, and whose personal bearing appeared in keeping with the character thus elicited of him. His knowledge of his uncle's premises enabled him to direct this robbery so successfully, and it is necessary to subject such promising villainy to exemplary punishment. Concurring in his conviction, I would recommend his being transported to the Deega Penitentiary, where he may very possibly learn to acquire such industrious habits as may tend to his timely reform.

Sentence passed by the lower court.—To be imprisoned for seven years with labor and irons in banishment. 1854.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The burglary seems to have been fully proved against the prisoner, but the only apparent reason for commitment to the sessions in a case of this kind, is the amount of the property alleged to have been stolen. January 21.
Case of
GOOHUN
BURNNEWAR.

In proof of this fact, however, there is nothing but the bare assertion of the prosecutor, and I am of opinion that before such a circumstance can be taken into consideration as a *ground of commitment* or of *enhancement* of punishment, it should be tested and proved, not received on the mere assertion of the prosecutor and allowed to operate directly in aggravation of the offence.

I therefore reduce the sentence passed upon the prisoner to two years with labor in irons.

PRESENT :

A. DICK, Esq., *Judge*.

GOVERNMENT,

versus

Rajshahye.

RADHANATH SIRDAR (No. 1,) RAMCOOMAR KURMOKAR (No. 2,) BHUKTAH CHAURAL ALIAS BHUGATAH BYRAGEE (No. 3,) AND HAGRAH CHUNG (No. 4.) 1854.

January 21.

CRIME CHARGED.—1st count, murder of Niejie Shahanah ; 2nd count, privy.

Case of
RADHANATH
SIRDAR and
others.

Committing Officer.—Mr. J. C. Dodgson, magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 14th December, 1853, A. D.

Four prisoners
charged with
murder, and
privy there-
to, acquitted
by the Court ;
their confes-
sions being
contradictory
one of another.

Remarks by the sessions judge.—The *futwa*, convicting the two first prisoners of aiding, abetting, and being accessaries both before and after the fact to a murder, and the other two of being present, and accessaries after the fact, makes the reference unavoidable.

The occurrence took place more than two years ago, in the Bengal month of Bhadur, corresponding with the month of August or September, 1851, and from this circumstance, and the whole having been so long concealed, what has been elicited in evidence, cannot be held to be satisfactory ; and if it was not for the confessions made by the prisoners, both before the police, and magistrate, there would be nothing to sustain the conviction.

Witness, No. 14. The deceased left home as usual one night to go and watch his paddy-field, but not returning, his father

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Case of
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others.

sent another son to look for him ; who, after two days, found his body partly stuffed into a sack on a *chur* in the river.

The chowkeedar, (witness No. 16,) having placed some persons to watch the body, proceeded to the thannah to report ; but falling in with a burkundaz, the latter told him that he would make a report. However on his coming back to the village, he learnt that the deceased's relatives had buried the body within their own premises, or homestead.

The deceased's brother, witness No. 14, recognised the body from a malformation of two of the toes on one foot ; and he saw a wound, or cut on the back of the neck. This is the only witness, who deposed to the corpse exhibiting marks of violence, though several saw it, as already stated, stuffed into a sack. How it came there, it may be as well now to describe.

Witness, No. 17. A widow, by name, Seetulee, had been called away by the prisoner, No. 3, to go and stay during the night with the wife of the prisoner, No. 2, with whom she admits she had for sometime previous been intimate ; when she went to No. 2's house, she saw the prisoner there.

Witness, No. 1. The mother of this woman (during her daughter's absence) was awoke by the noise of thieves, and discovered her house had been burglariously entered, the four prisoners, who had apprehended the deceased, were beating him, and on her calling out, No. 3 used threats to her ; and when lighting a lamp to see what was the matter, he (No. 3) blew out the light. She however heard the deceased say " Spare my life and let me go." She lost a sack from her house that night, and the prisoner, No. 3, told her she would not get it back. She also saw near the house Phohim talookdar.

Witness, No. 13. This person deposed to being called by the prisoner No. 2, when he went and saw a man putting another man's body into a sack ; the prisoners Nos. 1, 3 and 4, were standing by, or near, and they threatened him with the same fate, if he made any noise. It was then midnight ; Nos. 1, 3 and 4, then took up the body, and went with it in the direction of the river, but he did not follow them. (In the magistrate's court, he deposed he did follow them, and saw them throw the body into the river.)

Witness, No. 24. The last witness for the prosecution was a jail convict, and it was owing to a representation made by him to the magistrate that the murder, which had so long been concealed, was discovered.

The confessions are very lengthy, and as they must be read, I shall confine myself to an abstract of their contents, implicating the individual who made the confession.

No. 1, in the mofussil confessed to seeing the deceased seized at the house of the witness, No. 17, when he was put into a sack alive, carried to the river *Atri*, and then thrown into it by two

of the party. All then returned home. When he went to Seetulee's house, he took with him a *phalla* (a species of spear.)

In the foudjary, the prisoner made a similar confession, adding, however, that he assisted to seize the deceased himself.

No. 2, in the mofussil, confessed to seizing the deceased, who was beat and put into a sack, which was carried to the river, and thrown into it.

In the foudjary, he confessed again to seizing the deceased, who he made over to the other prisoners, while he went and called Phohim talookdar. After this, the deceased was carried to the river side, put into a sack and thrown into the water. His throat was cut, but who cut it he did not know. One of the party had a *phalla*, and another a knife which belonged to the deceased. He also admitted Seetulee had been offered a cloth by the deceased, and took eight annas from him, and he told her she should rue having done so.

No. 3, in the mofussil, confessed to seeing the body of the deceased lying near Seetulee's house, which was afterwards put into a sack, and carried and thrown into the river.

In the foudjary, the prisoner confessed to seeing one man kill the deceased, while another held him, and when he wished to interfere, they threatened him, if he revealed any thing. He also added, that both the deceased and Ramkoomar had an intrigue with Seetulee, and it was on this account that her brother, Hagrah, had killed the deceased.

No. 4, confessed he was in a field, watching at night, when he heard a noise at Seetulee's house, and going there he saw the deceased's body lying on the ground, and four persons were talking together; a sack and some rope was then brought, and the body was put into the sack and carried and thrown into the river.

In the foudjary he confessed to seeing the deceased's throat cut, who then and there died; another person held him. Pusha Aurret gave out a sack, in which the body was put, and tied up, and then carried and thrown into the river. That the reason, deceased was killed was, because he had before stolen a cloth and *lotta* belonging to Seetulee. Ramkoomar, who had an intrigue with Seetulee, told this to Radhanath, who killed him.

The defences set up by the prisoners, Nos. 1 and 3, were mere denials and that the deceased, they heard, had died of cholera. Nos. 2 and 4, set up *alibis*, but none of the witnesses, they brought forward, exculpated them.

All the confessions were proved to have been voluntarily made, but the witnesses to the mofussil confessions of Nos. 3 and 4, (made on the same date) could neither of them read or write. The foudjary confessions of these two prisoners were made on the 18th and 14th October before the magistrate, and I cannot help thinking both must have been told by the *burkundaz*, who brought them in, that if they implicated the others they would escape

1854.

January 21.

Case of
RADHANATH
SIRDAR and
others.

1854. themselves; for it is very rare *indeed* that a prisoner confesses to more than he did in the mofussil.

January 21. These prisoners (3 and 4) the law officer convicts of being present, accessaries after the fact, and privy to the murder of Neijie; and if either of the confessions can be relied on, there can be little doubt they were so.

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others.

Again, if the confessions of the other prisoners, Nos. 1 and 2, are taken together, nothing more, in my opinion, is brought home to them, except privy, and accessariship after the fact, for though they admit seizing the deceased, neither of them confess to striking, or maltreating him.

There may be suspicion that No. 1, was the murderer, and still more suspicion that No. 2, planned the murder, the motive being jealousy; or because he had a grudge against him for taking more than his share of the booty in a case of theft on a previous occasion; but, on mere suspicion, it would not do to convict these men of aiding and abetting.

As all are loose, if not bad, characters, I consider they may safely, on their confessions, be convicted alike of privy to the murder of Neijie, and being accessaries after the fact; and the sentence, I would recommend, is imprisonment for fourteen years. All admit to seeing his body stuffed into a sack, and to afterwards seeing it thrown into the river; and there can be very little doubt some of them assisted to carry it there, while the others followed.

The *phalla*, or spear, was not produced in court, and though the darogah reported it belonged to No. 1, there is no mention where it was found; and there is not a tittle of evidence to show that it was used to kill the deceased. In fact, how his death was caused, it is impossible to say; and the enquiries by the police and magistrate to elicit this point are far from satisfactory. With exception of one brother, none of his relatives have been summoned, or examined to ascertain what were the nature of the wounds on the body, when brought to his father's house, who, (according to witness Nq. 24,) as well as his mother, must have seen the wounds on the body before it was buried.

In consequence of so many witnesses being women (and who are the most difficult to get any direct answer from) and the obstinacy, or stupidity of witness No. 22, the trial occupied nearly three days; and owing to the pressure of other business, at the close of the year, there has been unavoidable delay in preparing this report to accompany the record of the trial; and which, I trust, the court will excuse.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The confessions of the prisoners are all so very contradictory one of another, that none are worthy of the least credit. The oral evidence is exceedingly unsatisfactory, in every respect, and coupled with the length of time that elapsed from the date of the

alleged murder to the date of its being divulged, is utterly insufficient to warrant a conviction.

The court therefore acquit all four prisoners and order their release.

1854.

January 21.

Case of
RADHANATH
SIRDAR and
others.

PRESENT:

J. DUNBAR, Esq., *Judge*.

GOVERNMENT,

versus

SATCOWRY DOOLEA MANJEE (No. 30,) ISHUR BAGDEE (No. 31,) NOBIN DOOLEA (No. 32,) SHEIKH TEENCOWREE (No. 33,) AND DEENOO BAGDEE (No. 34.)

Hooghly.

CRIME CHARGED.—1st count, having committed a dacoity in the house of Dwarkanath Newgee at Noagram, on the night of the 13th December, 1852, in which property to the amount of Rupees 255 was plundered; 2nd count, with having belonged to a gang of dacoits.

1854.

January 21.

Case of
SATCOWRY
DOOLEA
MANJEE and
others.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 6th January, 1854.

Remarks by the officiating additional sessions judge.—On the night of the 13th December, 1852, a dacoity was committed in the house of Dwarkanath Newgee at Noagram. A gang of about eighteen persons collected after night fall in a mangoe tope outside the village, and after the usual preparations and performance of *kali puja*, sallied forth to the attack near midnight. One of the gang scaled the outer wall and opened the gate. The party entered and some of them mounted to the upper story by means of a bamboo, used as a ladder. The door, leading to the staircase, was opened, and the whole gang rushed up, where torches were lighted, and the work of plunder carried on. The prisoner, Satcowry Doolea, No. 30, was one of those, who guarded the outer gate, and discharged a pistol, when pressed by the confronting villagers, and the rest of the prisoners, aided and abetted in the plunder, and otherwise took up part in the attack.

Five prisoners
convicted of
dacoity and of
having belonged
to a gang
of dacoits, and
sentenced to
transportation
for life.

* Witnesses Nos. 1 and 2. The evidence of the approvers, indicated in the margin,* will prove these facts, as also that all the prisoners have been associated with organized gangs of dacoits, and at different periods, and in various places, committed dacoity with them.

The fact of the dacoity charged will be established by the witnesses shown in the margin.†

† Nos. 3, 4.

1854. The prisoner, Nobin Doolea, No. 32, confessed before the commissioner for the suppression of dacoity, and his confession
 January 21. * Witnesses Nos. is attested by the parties marginally* noticed.
 Case of 6, 7. Its purport is an unreserved admission of
 SATCOWRY having participated in the dacoity, in company with the prisoners
 DOOLEA and others, and having belonged to the gang of which the prisoner, Satcowry Doolea, is the leader. These witnesses also
 MANJEE and verify the prisoner's detailed confession before the same functionary, in which he acknowledges his complicity in ten other
 others. dacoities.

The prisoners, with exception to the prisoner, Nobin Doolea, plead not guilty before this court. They make frivolous defences and cite witnesses in proof of a good character, which plea is not supported by witnesses examined on their behalf, six in number.

The prisoner, Nobin Doolea, repeats his plea of guilty, and makes no defence.

I convict all the prisoners of the crimes charged. The prisoner, Satcowry Doolea, No. 30, Ishur Bagdee, No. 31, Sheikh Teencowree, No. 33, and Deenoo Bagdee, No. 34, on the evidence of the two approvers, which is above all suspicion of collusion between the deposing parties, and the prisoner, Nobin Doolea, No. 32, on the same evidence, and his own confession, and propose that they be sentenced to transportation for life with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.) The two approvers swear, that the whole of the prisoners were engaged in the particular dacoity charged in the first count ; as also that they were concerned with them in a number of other dacoities. Their evidence, as now given, corresponds with the statements originally made in their detailed confessions, which were taken down separately, with every possible precaution to prevent collusion.

The prisoner, No. 32, Nobin Doolea, confesses his guilt, and implicates the other prisoners in the dacoity charged in the 1st count ; as also in several other dacoities, thus corroborating the statements of the approvers. The occurrence of the greater number of the dacoities referred to, has been verified from old records. None of the prisoners would appear to have been engaged in fewer than seven dacoities, and some of them are mentioned by the approvers, in connection with double that number.

Concurring in the conviction, the court sentence the whole of the prisoners to be imprisoned for life, with labor in irons, in transportation beyond sea.

PRESENT :

J. DUNBAR, Esq., *Judge.*

GOVERNMENT,

versus

LOYLAB MUSSULMAN.

Hooghly.

CRIME CHARGED.—Having belonged to a gang of dacoits.

1854.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

January 21.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 10th January, 1854.

Case of
LOYLAB MUSSULMAN.

Remarks by the officiating additional sessions judge.—This is a commitment under the provisions of Act 24, of 1843, and the prisoner pleads guilty to the charge of having belonged to a gang of dacoits.

Prisoner convicted of having belonged to a gang of dacoits and sentenced to transportation for life.

The approver's evidence establishes the crime against the prisoner, and proves his complicity in several dacoities with organised gangs.

The prisoner confessed crime before the deputy magistrate, under the commissioner for the suppression of dacoity, and admitted that he committed several dacoities under eight Sirdars.

The prisoner's detailed confession embraces 24 dacoities, documentary evidence of the occurrence of the major part of which will be found in the record of the trial. I believe both in the truth and voluntariness of this confession.

The prisoner repeats his plea of guilty before this court and makes no defence.

I convict the prisoner of having belonged to a gang of dacoits, on his own confession and the evidence of the approvers indicated

Witnesses Nos. in the margin, and propose that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The evidence of the approvers corresponds entirely with the statements originally made in their several confessions, and the occurrence of the most of the dacoities, mentioned by them, as well as by the prisoner himself in his own confession, has been verified from the records. The court sentence the prisoner to imprisonment for life, with labor in irons, in transportation beyond sea.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

AJAIB RAM,

versus

Sarun. PURMESHUR (No. 5,) DHONDA (No. 6,) MOHEEPUT
(No. 7,) AND ABLAC, (No. 8.)

1854. CRIME CHARGED.—Burglary and theft of property, value
Rs. 1,206-6.

January 21. CRIME ESTABLISHED.—Burglary and theft of property.

Case of Committing Officer.—Mr. J. F. Lynch, deputy magistrate of
PURMESHUR Sewan with powers of magistrate.

and others. Tried before Mr. C. Garstin, sessions judge of Sarun, on the
19th November, 1853.

Four pri- *Remarks by the sessions judge.*—The crime charged against
soners con- these prisoners has been clearly established both by their own
victed of bur- admissions at the thannah, and that some of their number to the
glary and theft deputy magistrate, and also by the discovery of part of the stolen
and sentenced property in about their dwellings. It is not very clearly shown
by the sessions judge to seven how the prisoners came in the first instance to be suspected,
years' impri- (though the prosecutor states that he learnt from a little boy,
sonment. the son of the prisoner, Moheeput, that his father was at that
Appeal re- time well supplied with ~~cash~~;) but it is quite certain, that the
jected. three first named prisoners confessed both at the thannah, and
before the deputy magistrate, that they had been engaged in the
theft, and that Ablac also was with them, and that they had
done it at the instigation of a person named Jhangoor Ram, (not
committed) and further that portions of the plunder were found
with them. Ablac did not indeed confess before the deputy ma-
gistrate that he had been engaged in the robbery, but he allowed
that the above named Jhangoor, had put the things in his house,
and at the thannah he admitted having been one of the party.
On the trial they all plead not guilty, but the defence made by
each of them, is, in my opinion, quite unsatisfactory, and I have
not myself the least doubt, but what they were all concerned in
the robbery, with which they stand charged. The jury convict
them all, and concurring in this verdict, I have sentenced them
as indicated in the proper column.

Sentence passed by the lower court.—Each to be imprisoned
with labor and irons for a period of (7) seven years.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The prisoners Nos. 5, 6 and 7, appeal on the ground
that Jhangoor Ram gave them the property to keep in their
houses, and prisoner No. 8, that what was said to be found in his
house was brought out of it by Jhangoor Ram saying he had

found it there, but alleging that nothing had been actually discovered in it. It is clear, however, from the confessions of all four prisoners at the thannah, and from the confessions of Nos. 5, 6 and 7, and the tenor of the answer of No. 8, before the deputy magistrate, and the evidence of the witnesses to the finding of the property, that the prisoners are guilty of the crime charged against them. I uphold the conviction and sentence accordingly.

1854.
January 21.
Case of
PURMESHUR
and others.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT,

versus

JADOO GHOSE (No. 1,) MONOHUR GHOSE (No. 2,) GOPAL CHUNDER PODDAR (No. 3.)

Nuddea.

CRIME CHARGED.—1st count, Nos. 1 and 2, committing a dacoity with others on board the boat of witness No. 1, and plundering therefrom his employer's property, of the value of Rs. 445-14-3, on the night of the 15th November last, No. 2, being a sirdar dacoit; 2nd count, No. 2, attempting to murder the witness No. 1, by assaulting and throwing him overboard into the river, and No. 3, 1st count, knowingly receiving and keeping stolen and plundered property of the value of Rs. 445-14-3, obtained in the above dacoity, and being a notorious receiver of stolen property; 2nd count, being privy to this dacoity, and being accessory to it, and aiding and abetting the robbers before and after the fact.

1854.
January 21,
Case of
JADOO GHOSE
and others.

One prisoner convicted of river dacoity with attempt to murder, and sentenced to transportation for life. Two others convicted as accomplices and sentenced, respectively, to fourteen years' imprisonment in banishment and ten years in the zillah jail.

Committing Officer.—Baboo Issur Chunder Ghosaul, deputy magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 7th December, 1853.

Remarks by the sessions judge.—I am of opinion that the charge of river dacoity and plundering property, attended with violent assault on Gopal Manjhee and attempt to murder him by throwing him into the river, has been clearly proved against Monohur Ghose, prisoner, No. 2, by the evidence of the witnesses, and the confession of Jadoo Ghose, prisoner No. 1, against whom, by his own confession and the pointing out by him of the plundered property in the house of Gopal Chunder Poddar, the crime of being accomplice in the above crimes has been established and the crime of being accessory after the commission of the dacoity and plundering, and wilful criminal receipt of the whole of the plundered property, valued at Rs. 445-14-9, has been clearly proved by his confession, and the property being found concealed in his house.

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Case of
JADOO GHOSE
and others.

Jadoo Ghose made no defence nor did he call any witnesses.

Monohur Ghose pleaded that he was in his own house all the night of the occurrence, but failed to prove an *alibi*. One of his witnesses says he looked for him and could not find him during the night, and not one of them gave any evidence in his favor, Gopal Chunder called witnesses to prove that he objected to the property being placed in his house, but not one gave evidence in his favor.

Monohur is a notorious robber and Gopal Chunder, from the way in which the property was concealed in his house, must have taken an active part in its concealment.

With reference to all the circumstances, I have sentenced Monohur Ghose, No. 2, to be transported for life, Jadoo Ghose, No. 1, to fourteen years in banishment and Gopal Chunder, No. 3, to ten years' imprisonment in the zillah jail, all with labor in irons, which sentences, I trust, the court will be pleased to confirm.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) This is a referred case under Regulation VIII, 1818.

The prisoner No. 2, Monohur Ghose, was recognized by the chokeedar, who came to prosecutor's assistance, as one of the dacoits. Prisoner was also seen by three witnesses to whom he was well known and with whom he had some conversation, as he was *enroute* to the house of prisoner No. 3, with the plundered property which was found there, and the prisoner at once stated he had received it from No. 2, who is reported to be a bad character while his witnesses say nothing in his favor. The dacoity was attended with some violence and under the circumstances, sentences, proposed to be passed on all the prisoners, as recommended by the sessions judge, are not too severe.

PRESENT :

J. DUNBAR, Esq., *Judge*.

Hooghly.

1854,

GOVERNMENT,

versus

BRINDABUN CHUNG.

January 24.

Case of
BRINDABUN
CHUNG.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Prisoner convicted of having belonged to a gang of dacoits and sentenced to transportation for life.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 10th January, 1854.

Remarks by the officiating additional sessions judge.—This is a commitment under the provisions of Act XXIV. of 1843, and the prisoner pleads guilty to the charge of having belonged to a gang of dacoits.

The approver's evidence establishes the crime against the prisoner, and proves his complicity in three dacoities with organised gangs.

The prisoner confessed crime before the deputy magistrate, under the commissioner for the suppression of dacoity, and admitted that he committed twenty-seven dacoities under twenty sirdars.

The prisoner's detailed confession embraces twenty-nine dacoities, documentary evidence of the occurrence of the major part of which will be found in the record of the trial. I believe both in the truth and voluntariness of this confession.

The prisoner repeats his plea of guilty before this court, and makes no defence.

I convict the prisoner of having belonged to a gang of dacoits, on his own confession and the evidence of the approver, and propose that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar). The confessions of the prisoner are duly sworn to by the subscribing witnesses. The deposition on oath of the approver corresponds, as regards the prisoner, with the statement made by him, in his original confession, and the prisoner himself now pleads guilty. Concurring in the conviction, the court sentence the prisoner, Brindabun Chung, to be imprisoned for life with labor in irons in transportation beyond sea.

1854.

January 24.

Case of
BRINDABUN
CHUNG.

PRESENT :

A. DICK, Esq., *Judge*.

Moorsheda-
bad.

1854.

KHOODERAM AND GOVERNMENT,

versus

KENOO RAJBUNGSEE (No. 30.) AND KALEE CHOW-
KEEDAR (No. 31.)

January 24.

Case of
KENOO RAJ-
BUNGSEE and
another.

CRIME CHARGED.—1st count, burglary attended with wound-
ing committed in the house of Khooderam Dhoba the prosecutor, from which property to the value of Rs. 3-10, was stolen; 2nd count, having received and possessed property, knowing the same to have been acquired by the said burglary; 3rd count, privy to the said burglary before and after the fact.

CRIME ESTABLISHED.—Burglary attended with wounding and theft.

Committing Officer.—Moulvee Abdool Jubbar, law officer.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 29th September, 1853.

Two prisoners convicted of burglary attended with wounding and theft, and sentenced by the sessions judge to seven years' imprisonment.

Appeal re-
jected.

1854.

January 24.

Case of
KENOO RAJ-
BUNGSEK and
another.

Remarks by the sessions judge.—On the night of the 15th July, 1853, the house of the prosecutor was burglariously entered into by the prisoners, and some property stolen. The prosecutor arrested the prisoner, Kenoo, in the house, but the prisoner, after slightly wounding the prosecutor with a knife and hofding him fast, managed to get out of the house through the hole which the prisoners had made. One of the neighbours, named Manick, came to his, the prosecutor's rescue, when they were struggling outside, and succeeded in apprehending the prisoner, Kenoo. The prisoner, Kalee, made his escape at the time. On *thal*, (a *kansa* plate) was found at the entrance of the hole. The prisoner, Kenoo, said that he was accompanied by Kalee, and the latter when apprehended gave up two silver *hansolees* from a paddy-field. The prisoners were then made over to the police where, as also before the law officer, they both confessed.

From the evidence of the witnesses to the apprehension and to the identity of the property, as also from the confession of the prisoners, the charge against them was fully established. They denied the charge in the sessions court, but their defence did not exculpate them. From the evidence of the witnesses for the defence of the prisoner, Kalee, it was proved that he was absent from his *mehalah* on the night of the occurrence. The prisoner, Kenoo, had no witnesses for his defence; he was before convicted of burglary and bad character, and twice imprisoned. The prisoner, Kalee, was the chowkeedar of the village.

The case was tried by the aid of assessors, who pronounced the prisoners guilty of the offence with which they stood charged, in which finding the sessions judge concurred, and sentenced the prisoners, as stated in the proper column, upon full legal proof.

Sentence passed by the lower court.—To be imprisoned for the period of (7) seven years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The court see no reason for interference with the sentence passed on the prisoners, by the sessions judge.

PRESENT.

SIR ROBERT BARLOW, BART., AND H. T.
RAIKES, ESQ., *Judges.*

GOVERNMENT, OODYECHANB BANERJEE, AND
HIS SERVANT, NOBOKANTH PURIKHEA,

versus

MANICK LOHAR.

West Burd-
wan.

1854.

January 24.

Case of
MANICK LO-
HAR.

CRIME CHARGED.—Wilful murder of Bhoyrub Banerjee, father of Oodyechand Banerjee, on the night of the 11th September, 1853, corresponding with the 27th Bhadoon 1260, B. S., with blows of an axe.

Committing Officer.—Mr. A. R. Thompson, officiating joint-magistrate of Bancoorah.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 22nd December, 1853.

Remarks by the sessions judge.—All the chief circumstances of this case are to be found in the confessions of the prisoner, which are as follows :—

Confessions before the mohurir of thannah Gourang-dhee, dated 18th September, 1853.

“Ten or fifteen days ago, on some date of the current month of Bhadoon, which has escaped my memory, Dunnoo Byragee came to my house, and standing under a sujna tree in my compound, told me, that the misirs of Guggunabad had offered to give me 100 Rs.

Prisoner convicted of wilful murder on his own repeated confessions of his guilt as a hired assassin in the crime; sentence of death passed upon him.

if I would kill Bhoyrub Banerjee Khazanchee, and that if I would do so, or take off his gomashtah, whose name, I don't know, he had been directed to give me that sum. I said let me have the money. He said, he would, but went home at that time. Three or four days after, in the evening, the same Dunnoo came to me again and said, that Magaram, misir of Guggunabad and another misir, whose name I don't recollect, were at his house, and had sent for me, about the 100 Rs. for which I was in treaty. On going to Dunnoo's house, at his request, I found Magaram and Sheodurshun misirs, sitting there, who said, in Dunnoo's presence, that I need not be afraid of not getting the money, if I did what was required for it. Upon this, I consented, and swore upon Maga's foot, that I would do the deed. Having done so, I went home, but did not mention the matter to my woman, or any one else. Four or five days after, i. e. on the night* of the murder, at about 3 o'clock, when the Raja's jattrā or festival, which had been going on up to that time, had ceased, the afore-said Dunnoo, Magaram and Sheodurshun came and sat down by the *sulaghee gurha* or tank, which is behind my house. Magaram

* Properly 12th September, 1853, and not 11th, as in the calendar, but the native date is right, as their night is from sunset to sunrise.

1854. and Sheodurshun remained there, but Dunnoo came to my house, whereupon I took this *tanghee*, which was hidden under the thatch and accompanied him. Dunnoo said, 'There is no doubt of your getting the money, so come along.' We then went together to the misirs, who also observed that I was sure to be paid, and added, 'Come and kill Bhoyrub.'

January 24.
Case of
MANICK LO-
HAR.

"Those three persons and I then approached the rear of Bhoyrub's house, and, after crossing a small thorn fence, got into the garden, where there were *byguns*, &c. growing. After standing there a short time, we moved on to a broken place in the south-western wall of the *baree*, where Magaram first, and then I stepped over the *sheeb lingh phalli*, (of burnt earth) which were lying there, and got inside, leaving Sheodurshun and Dunnoo in the garden. Magaram and I then saw the deceased, Bhoyrub, lying on a bed-stead, in the western verandah of his south-doored house, with his head to the west. His hand was under his cheek, his face turned towards the north, and his body on its side. I stepped up into the raised verandah, and standing with my face towards the north, inflicted a blow with my *tanghee* on his lip and cheek. As soon as I had done this, Magaram and I returned by the broken opening in the wall, and after joining Dunnoo and Sheodurshun, went off with them. After we had re-crossed the thorn fence, and when we were not far from it, Magaram misir snatched the *tanghee* from my hand and cast it into the *sulaghee gurchia*. Magaram misir and Sheodurshun ran off to Guggunabad, and Dunnoo to his house. I also went home, and to sleep with my wife Keenee. I heard the *purikhia* (Nobokanth prosecutor) leave the house of deceased, for Pooroollea, shortly before I went to slay deceased. It was so dark that I cannot tell what persons were sleeping in his house, besides himself, nor whether any body saw me. For seven or eight days past, I have said nothing about all this, as nothing had been discovered. This morning Kisto chowkeedar came for me, and after telling me that my *tanghee* had been found in the tank, said, that the bukshee wanted me. I was at work in the *gomoloo* baree* and leaving Gooneeram Baoree to finish the work, went to that officer at Kasheepoor. On his showing me the *tanghee*, I acknowledged that it was mine. I have never been apprehended in any case before, and I have confessed of my own accord.

Confession before the assistant magistrate, in charge of the Munglepore Division, taken on the spot, dated 19th September, 1853.

"The prisoner's confession before the assistant magistrate repeated the particulars of the murder, nearly in the same terms as the above, but added, that the misirs and Dunnoo wished Bhoyrub Khazanchee to be killed, because he had taken possession of Guggunabad as part of his talook, and thereby, inflicted an injury

* A kind of small grain.

upon their family, and that neither Dunnoo nor the misirs had paid him the stipulated reward for the murder. He also acknowledged his former confession and said, that he had made it to punish the above persons, for not having fulfilled their promise."

Confession made to the officiating joint-magistrate at Bancoorah, on the 29th October, 1853.

The officiating joint-magistrate put certain questions to the prisoner, on the 29th October and 7th December, the greater portion of which had reference to the misirs and Dunnoo, who have not been committed, but on the first of the above dates, the prisoner confessed, in answer to a direct question, that he had slain the deceased, Bhoyrub, with the *tanghee*, which, then and there, lay before him.

The evidence of all the witnesses is merely circumstantial, as will appear on reference to the various headings in the calendar.

Both the prosecutors (the 2nd of whom Nubbokanth Purikhia should have been made a witness) were absent at the time of the murder, but their depositions disclose, that the persons named by the prisoner in his confession, with their relations, are the only ones likely to have suborned the deed. The apprehension of the prisoner, and the authenticity and willingness of the various confessions, are fully substantiated by the witnesses thereto. The state of the house and body are duly sworn to by the witnesses to the *sooruthall* and the native doctor of Mungulpore, and there can be no doubt as to the finding of the *tanghee* in the *sulaghee gurbia*, and its recognition as deposed to by the witnesses named under the red ink headings, apparent in the column appropriated to circumstantial evidence.

Many of the witnesses corroborate the statements of the prosecutors, as to the enmity entertained by Dunnoo Byragee and the misirs against the deceased, and some of them state that Dunnoo, Magaram and Sheodurshun were at the rajah's festival and near the *sulaghee gurbia*, on the night of the murder, but as the officiating joint magistrate did not consider the evidence against these persons sufficient to warrant their committal, no abstract of their depositions need be given here.

The deceased was the khazanchee of the Patchete Rajah and an exceedingly corpulent man, with a heavy double chin. (See the deposition of Gooroochurn Baoree (No. 25.) This fact is alluded to in consequence of the nature of the deposition given

* Length, 11 fingers, breadth 4 fingers and depth 4 fingers, dividing the carotid and other arteries, and extending from near the under lip to the left collar-bone.

by Sheikh Hossain Buksh, native doctor of Mungulpore, witness No. 1, who after describing the length, breadth and depth of the wound, found on the chin and neck of the deceased, as per margin,* declares it to be his opinion, that it could not have been inflicted with the *tanghee* or axe, as acknowledged by the prisoner, but with a knife or razor.

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January 24.

Case of
MANICK LO-
HAR.

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Case of
MANICK LOHAR.

The reasons on which he bases his opinion are, the cleanness of the cut and non-fracture of the subjacent bones. I conceive his opinion to be entirely erroneous, and so does the law officer, as his *futwa* shews. If the corpulence of the deceased and the fact that the prisoner struck him from behind and above, as he lay sleeping before him, be remembered, as well as the very peculiar form and great sharpness of the *tanghee*, no doubt will I think remain of the infliction of the wound by the weapon in question.

It is clear to me, that the upper wing of the axe struck first, dividing the arteries, and that the cut on the chin was made by the recurved portion of the blade. As this could not have fallen with nearly the same force as the upper wing, non-fracture of the lower jawbone is fully accounted for. The weapon weighs only ten chittacks and three tolahs, is eight inches wide, with an exceedingly thin and sharp edge, and the bamboo handle is nearly two cubits long. The somewhat curved line of the wound may, partly, be accounted for, by the position of the parts when the blow was struck, and partly, by displacement caused by their decomposition and tumescence, when the doctor inspected them.

The prisoner's defence before this court is, that his confessions were dictated to him by the mohurir and the assistant magistrate, and his writer; that Magaram missir of Guggunabad had been in the habit of borrowing his axes and did so the day before the murder, and that he lives by cultivating the earth, and is a person of good character. The depositions of his witnesses are of no avail for his defence.

The *futwa* of the law officer convicts the prisoner of wilful murder, "*bhuzun-o-ghalib*," or on violent presumption, in consequence of there being no eye-witnesses to the crime, and declared him liable to suffer death, by *seasut*.

As there can be no doubt of the willingness and authenticity of the three confessions made by the prisoner, nor of the identity of the *tanghee* or axe, which has been acknowledged by him before this court, and as all the circumstantial evidence obtainable goes to shew, that the confessions are true, I am obliged to concur with the law officer's finding, except that I consider the proof full and legal, and in the absence of any extenuating circumstances, to recommend that the prisoner, Manick Lohar, be sentenced to suffer death.

It is lamentable that the suborners of the crime cannot receive the punishment they so richly merit, but the mere apparent fact, of the prisoner having been animated by no personal hatred against his victim, ought not to act, as an extenuating circumstance, to such an extent, as to save him from the utmost punishment.

Assassination, through the instrumentality of hired bravos, is a crime for which this district is peculiarly infamous, and

policy therefore requires, that no person, thus vicariously ministering to revenge, should escape the last penalty of the law.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart., and Mr. H. T. Raikes.)

Sir R. Barlow.—The prisoner confessed very fully before the police and the foudaree court. He pleads not guilty in the sessions court, stating that he merely repeated what the *bukshree* and the *keranee* told him to say. The prisoner's witnesses speak as to his character. There can be no doubt of his guilt and there do not appear to be any grounds for a mitigated sentence.

Mr. H. T. Raikes.—I agree with Sir R. Barlow, in considering the prisoner's guilt fully proved. The prisoner was apparently induced to confess by the hope of punishing his employers, who, according to his statement, had hired him to commit the murder and withheld payment of the stipulated sum : there is nothing in the case to justify any other than a capital sentence.

PRESENT :

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND BUDUN HAKAR,

versus

JAMEER SIRDAR.

Rungpore.

CRIME CHARGED.—Rape upon the person of Roopa Aurut, the wife of the prosecutor.

1854.

Committing Officer.—Mr. R. H. Russell, joint-magistrate of Bograh.

January 27.

Tried before Mr. W. Bell, sessions judge of Rungpore, at the sessions of Bogra for the 4th quarter of 1853.

Case of
JAMEER SIRDAR.

Remarks by the sessions judge.—The prisoner met Roopa Hareanee returning to her house, about 12 o'clock on the morning of the 8th of November, 1853, near a tank, and threw her down in the paddy-field and raped her. The facts are established by the evidence of the woman and witnesses, Nos. 2, 3, 4 and 5. She is proved to be a respectable woman, and to have raised the alarm, and brought the neighbours to the spot by her screams. At the thannah, the prisoner said, he wanted to have connection with her, but she seeing the people refused, and so he forced her ; at the sudden, that she had connection with him voluntarily, but seeing the people screamed out, and before the sessions court, he says, it was with her consent, and brings forward a witness to prove it, who declares he knows nothing.

Prisoner convicted of rape and sentenced to seven years' imprisonment.

The law officer convicts ; I, considering the frequency of the

1854. crime hereabouts, recommend a sentence of seven years, with labor and irons.

January 27. *Remarks by the Nizamut Adawlut.*—(Present: Mr. H. T. Raikes.) The prisoner defends himself by saying that the woman consented, but finding they were observed by others, she began to scream and accused him of having forced her.

Case of
KADEER SIR-
DAR.

From the evidence of the witnesses, it appears that they saw them in the act, and considered the woman was not a consenting party; that as soon as she was released, she came to them and accused the man, whom she did not know, of having forced her person, and called upon them to be witnesses of the fact.

This, if trustworthy, seems to me sufficient to establish the prisoner's guilt. The accusation was immediate, and the cries of the woman, previously, seem to corroborate her statement.

I convict the prisoner of the crime charged, and sentence him, as proposed by the sessions judge, to seven years' imprisonment with labor in the zillah jail.

PRESENT:

J. DUNBAR, Esq., *Judge*,

Jessore.

AND

B. J. COLVIN, Esq., *Officiating Judge*.

1854.

January 27.
Case of
KADEER KA-
RIGUR.

GOVERNMENT,

versus

KADEER KARIGUR.

Prisoner convicted of the wilful murder of his pregnant wife and three infant children. The evidence shewed that though not of strong intellect, he was sane and accountable for his actions, and he was accordingly sentenced to suffer death.

CRIME CHARGED.—Wilful murder of Soorjo Bebee, his wife, at the time pregnant, and that of his children named Bholie Chokra, Arfin Chokra and Kofeela Chokree.

Committing Officer.—Mr. E. W. Molony, acting joint-magistrate of Magoora.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 5th January, 1854.

Remarks by the sessions judge.—At midnight of the 21st October, the prisoner was seen near the corpses of his wife and three children, one of whom was decapitated and the heads of the others were nearly severed. A bloody *dao* was lying near. He confessed to his nephew, (16) brother (17) and others (18, 19) that he was angry with his wife for not making a thin cake, which he had ordered, and therefore murdered her and her children. He then ran away.

Witnesses.

No. 16, Helaludi } nephew.

Karigur, . . . }

17, Hadi Ka- } brother.

rigur, }

18, Lal Mamood Karigur.

19, Affazuddi Karigur.

Witnesses.

- 7 Anund Chunder Tantee.
- 8 Kefatoollah Karigur.
- 9 Kadeer Mamood.
- † 1 Torikoolah.
- 2 Armanoollah.
- 3 Satkoree chowkeedar.
- ‡ 10 Mirtunjoy Shaha.
- 11 Abass Ali Meer.
- 12 Tumuzudi Sheikh.
- § 13 Joseemuddi Joardar.
- 14 Shoritoollah Nusker.
- 15 Naseeruddi Biswas.
- || 16 Helaluddi Karigur.
- 17 Hadi Karigur.
- ¶ 19 Affazuddi Karigur.

The bodies* were sent in on 23rd, and examined by Dr. Palmer. The prisoner, when apprehended† on 23rd began crying and beating his head. He was taken to the thannah that night and the next morning confessed‡ before the police.

He reiterated his confession§ before the joint-magistrate the following day, and in the sessions court also he admits his guilt.

His|| relatives, as well as the civil assistant surgeon and a neighbour,¶ declare that the prisoner was not insane.

His brother (16) says that two years ago he had giddiness.

The civil assistant surgeon considers him to be of weak intellect.

The murder was most atrocious. The children had committed no offence. The provocation given by the wife was very slight.

The jury give a verdict of guilty, in which I concur.

I see no reason why he should not suffer the full penalty of the law.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. Dunbar.)

Mr. B. J. Colvin.—This is a barbarous murder, the commission of which the prisoner confessed before the police, the magistrate and the sessions judge. He was provoked to it, he says, by the refusal of his wife to cook a cake for him, and by irritating language used by her on their retirement to rest. The prisoner has also said that his wife was in the habit of using abusive language to him, but he acknowledges her to have been of good character. There was, by his own account, nothing to palliate the deed, even if he had confined himself to murdering his wife; but not content with that, he murdered his three children; one of them, he would make it appear, by the blow intended for his wife.

After the act he came out of the house, alarmed his neighbours, and told what he had done; he was seized and bound; but watching his opportunity, he escaped and remained concealed for two days; then he gave himself up; all this proves sanity on the part of the prisoner. His relatives say he had been before affected in his head, but their account does not shew any thing like insanity or lunacy, and the medical officer, although he considered the prisoner to be weak-minded, thought him accountable for his actions.

I can find nothing, which would justify a remission of the capital punishment recommended by the sessions judge.

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Case of
KADEER KA-
RIGUR.

1854. Mr. J. Dunbar.—It appears from the evidence and from the prisoner's confessions, that he and his wife occasionally quarrelled with each other; and the testimony of his brother is exactly to the same effect as that of the medical officer, namely, that the prisoner is not a man of strong intellect, but still sane and quite accountable for his actions. The murder of his pregnant wife and his three children was, on his own admission, caused merely by his own ungovernable temper, roused into action by the angry words which passed between them, after retiring to rest, and just before the fatal deed.

I see no extenuating circumstance in the case, and therefore concur in the sentence of death.

PRESENT:

J. DUNBAR, Esq., *Judge*.

GOVERNMENT,

Hooghly.

versus

1854. JODOONATH MOOKHOPADHEY ALIAS JODOO THAKOOR (No. 2,) SHODARAM CHUNG ALIAS SHODA CHUNG (No. 3,) BISSONATH ROY CHUNG (No. 4,) GOOROOCHURN BYTÉE (No. 5,) AND SHONATUN ROY (No. 6.)
 January 27. Case of JODOONATH MOOKHOPADHEY alias JODOO THAKOOR and others.
 CRIME CHARGED.—1st count, committing a dacoity in the house of Goorooopersaud Mookhopadhey at Gobindpore, on the night of the 10th March, 1840, in which property to the amount of Rs. 462-3, was plundered; 2nd count, belonging to a gang of dacoits.

Six prisoners convicted of dacoity, and of belonging to a gang of dacoits and sentenced to transportation for life.
 Committing officer.—Baboo Chunder Seker Roy, deputy magistrate, under the commissioner for the suppression of dacoity, Hooghly.
 Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 16th January, 1854.

Remarks by the officiating additional sessions judge.—The

* Witnesses Nos. 1 and 2. testimony of the approvers marginally* noticed, prove both counts of the charge against the prisoners. It details the particulars of the dacoity charged, which are in no way remarkable, and establishes the complicity therein of all the prisoners, and also shows that they have systematically pursued dacoity as a means of gaining livelihood and been associated with organized bands.

† Witnesses Nos. 3, 4, 7. The witnesses, enumerated in the margin,† prove the occurrence of the dacoity in question, in general terms.

The prisoners plead not guilty before this court, and contend that the approvers have accused them wrongfully and from malicious motives. None of the witnesses named by them, in proof of the unexceptionableness of their character and conduct, appeared on the trial.

The approvers' evidence is clear and consistent, and corroborated by the detailed confessions of the parties on their arrest. These were recorded under circumstances, which preclude all suspicion of collusion, and are supported by facts. The statements were given severally in July, 1852, and August, 1853. I convict all the prisoners on that evidence and recommend that they be sentenced to transportation for life with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunder.) The evidence against the prisoners is simply the testimony of the two approvers, but the reasons, for receiving that testimony as unquestionably true, are very strong. It corresponds with the statements made by them in their original confessions, which were taken down with every precaution against the possibility of collusion, and it is corroborated, as to the actual occurrence of the several dacoities mentioned, by the old records. Convicting the prisoners on both counts, the court sentence them to be imprisoned for life with labor in irons in transportation beyond sea.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT,

versus

ALEE NUSHO.

CRIME CHARGED.—1st count, stealing from the house of Puchee Bewah, Sumutoollah, a boy of about four years, the son of Berun Aurut; 2nd count, having in his possession the said child, knowing him to have been stolen, and 3rd count, illegally and clandestinely carrying off from the house of Puchee Bewah, Sumutoollah, a boy aged about four years, the son of Berun Aurut, and detaining him in his possession seven days.

CRIME ESTABLISHED.—Carrying off illegally and clandestinely from the house of Puchee Bewah, a boy, named Sumutoollah.

Committing Officer.—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. W. Bell, sessions judge of Rungpore, on the 8th October, 1853.

Remarks by the sessions judge.—It appears from the deposition.

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Case of
JODOONATH
MOOKHOPA-
DHEY alias JO-
DOO THAKOOR
and others.

Rungpore.

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Case of
ALEE NUSHO.

A Mussulman who had married a widow, took away one of her children by her former husband from the house where it lived. The law officer of the court held that he was not guilty of any crime, and he was accordingly acquitted.

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tion of the witnesses that Puchee Bewah and Berun Aurut were left widows, the latter with two sons and a daughter, and that Berun connected herself by *nika* with the prisoner, Alee; Puchee Bewah retaining her former husband's children. Berun was dissatisfied with Alee and in the habit of leaving him, and after some days' separation he went at night to Puchee's house and carried off Sumutoollah, a boy of four years old; she gave information at the thannah, but neither Alee nor the child could be found. After seven days Alee brought back the child and was arrested, he acknowledged the fact before the darogah and magistrate, and said he had taken the child in the hope that the mother, Berun, would return to him. Before the court he denied the theft, but offered no evidence in his defence.

The law officer convicts in the 3rd count and I agree.

Sentence passed by the lower court.—Imprisonment without irons for six (6) months, and to pay a fine of fifteen (15) rupees within one month, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) The Kazee-ool Koozat in his futwa declares that no offence under the Mahomedan law has been committed. The zillah law officer convicts the prisoner of the 3rd count.

I concur with our law officer in the opinion that no crime has been committed. The prisoner's object was evidently to get back the child's mother, whom he had married in the *nika* form, through the child, which he for that purpose carried away and voluntarily brought back.

The prisoner must be acquitted and released.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND KALEEKOOMAR NAG,

versus

BHOYRUB CHUNDER BAROYE (No. 17,) AND JUBBER
ALLY (No. 18, APPELLANT.)

Backergunge.

1854.

CRIME CHARGED.—Riot attended with the culpable homicide of Ramlochun Nag and the wounding of Addoo Khullifa, on the 27th May, 1852.

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Case of
JUBBERALLY.

CRIME ESTABLISHED.—Riot attended with the culpable homicide of Ramlochun Nag and the wounding of Addoo Khullifa.

Two prisoners convicted of riot attended with culpable homicide and wounding, and sentenced to five years' imprisonment. Appeal rejected.

Committing Officer.—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 7th September, 1853.

Remarks by the sessions judge.—This is a supplementary case to one tried originally at the sessions for November, 1852.

The following is an extract of the judges' remarks on the conclusion of the trial.

"The plaintiff in this case, Kaleecoomar Nag, a son of the deceased, Ramlochun Roy, deposes that he was away from home at the time the riot took place. That there has been a quarrel of long standing between Chundernarain Nag and Kaleecoomar Roy and others, on account of some land held by the wife of Chundernarain Nag and also on account of a melah, which the latter had established, which was held during the month of Bysack, and by which a previously established melah of Kaleecoomar Roy's was injured, the people preferring that of Chundernarain Nag, and not frequenting the other in consequence. That a day or two after the riot he received a letter, stating that Kallycoomar Roy and his people, in number about 300 or 350, had come to attack the house of Chundernarain Nag and carry him off, and that when deponent's father, Ramlochun Nag, Hurchunder Ghose, Addoo Khullifa and Mohab Allee, had come forward to prevent them, the rioters had wounded Addoo with a *soolfee* and his father with an *atur* (a two or three pronged fish spear); carried the latter off, and, having got up a false charge against him of attacking the house of Hur Mohun Roy, had taken him to the thannah and stated that he had been wounded in that attack, whence he had been sent into the sudder station. On hearing this, deponent came straight to Burisaul and found his father with two very severe wounds under the left armpit, the ribs being broken, apparently from which

1854. wounds he died in the hospital, about fourteen or fifteen days afterwards."

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Case of
JUBBER ALLY.

On the case going to the Nizamut Adawlut in appeal, the following remarks were recorded by the presiding judge.

"The evidence appears to me to disclose the real facts of the case, and is, I think, impartial and good. It would seem that there were two riots; that the Nag's party had in the morning seized and carried off two ryots of the defendants; that in the afternoon the defendants went with an armed force to seize some of the ryots of the plaintiff. They were resisted by the latter and his men, also armed, that a fight ensued, and that the deceased fell into a tank and was there wounded by a fish spear. On this occasion, the defendants were, no doubt, the aggressors. I see no reason to distrust the fresh evidence, because the witnesses maintained silence for so long a period, the riot occurred in the day time in a village, and was no doubt witnessed by hundreds of persons, but their opinions are not those of Europeans, actuated by a proper public spirit; the latter would come forward and offer their testimony, natives would, on the contrary, to avoid the harassment of attendance at court, prefer paying a *douceur* to the police. The witnesses have deposed distinctly to the prisoners taking an active part in the riot, and the *alibi* set up by the prisoners has availed them nought. Concurring in the conviction, I reject the appeal."

The prisoner, No. 17, is the party, whose son was carried off by the Nag's men, to rescue whom the Roy's party afterwards assembled and committed the riot. The prisoners were named from the beginning by numerous witnesses, and have been again recognized and sworn to by some of the same parties. No 17, pleaded that he did not join the rioters, who went to the rescue of his son, but named no witnesses, and No. 18, pleaded that the Jubber Ally, who was referred to at first, is another person of that name, who, after the riot, was employed and is still in the employ of the Nags as a *lateeal*. He cited three witnesses to his defence, but they failed altogether to establish any thing in his favor.

Sentence passed by the lower court.—Each to be imprisoned for five (5) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) Prisoner, No. 18, has appealed. He is called in the Bengalee calendar, son of Jaffir Ally, and in his defence, both before the magistrate and sessions judge, he mentioned his father by that name. In his petition of appeal he now urges that he is Jubber Ally Khonkar, son of Futteh Allee Khan. It is evident that this is only an invention, by way of attempt to disprove his being the real person. He has been distinctly recognized as concerned in the riot, which gave rise to the former trial. His appeal is rejected.

PRESENT :

B. J. COLVIN, Esq. *Officiating Judge.*

ROMUN BANERJEA AND GOVERNMENT,

versus

HURRI ROY (No. 6,) LOCHUNDROSS BURNICK (No. 7.)
RAJOO SAIN (No. 8,) SIBOO SAIN (No. 9,) BISSOO
SAIN (No. 10,) NUFFER ROY (No. 11,) RAJOO ROY
(No. 12,) AND KHOODEERAM ROY (No. 13.)

West Burd-
wan.

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Case of
HURRI ROY
and others.

CRIME CHARGED.—1st count, Nos. 6 to 13, wilful murder of Damoodur Banerjea, brother of the prosecutor, Romun Banerjea, by blows of a *lattee* and *tanghee*, on the 17th November, 1853, corresponding with 3rd Aughun, 1260, B. S. ; 2nd count, riotously assembling for the purpose of causing a breach of the peace, regarding some disputed crops, and wounding Damoodur Banerjea with a *lattee* and *tanghee*, on the above mentioned date, from the effects of which the aforesaid Damoodur Banerjea died, on the same night ; and 3rd count, Nos. 8 to 13, accessaries before the fact.

Riot with culpable homicide established against one prisoner, aiding and abetting in the same proved against the others.

Committing Officer.—Mr. A. R. Thompson, officiating joint-magistrate of Bancoorah.

Tried before Mr. Pierce Taylor, sessions judge of West Burdwan, on the 7th January, 1854.

Remarks by the sessions judge.—The evidence shews that the circumstances under which the deceased, Damoodur Banerjea, met his death, were as follows : Gungaram Banerjea, son of the prosecutor and nephew of the deceased, about two years ago, engaged for three beegahs of land in mouza Bolara, called Thakoorah Bhakra, at a fixed rent of Rs. 6, with the prisoner, Rajoo Sain, No. 8, who held it in the first instance from Rasoo Hazaree, a near relation of the witnesses, Nos. 1, 2, 3, 4 and 6 : some time before the crops of the present year were ripe, Rajoo became dissatisfied with the rent, which he received from Gunganarain, and told prosecutor that he must give up the land ; and the defence of the prisoner, Lochundoss, No. 7, shews, that he was the intended new occupant, at an enhanced jumma of Rs. 7½. It appears that the prosecutor and deceased were fully aware on the 2nd Aughun, that a forcible attempt was to be made to put Lochundoss in possession and to remove the crops, and that they therefore, hired some labourers to assist them in reaping them, in the hope that their party would, then, be sufficiently strong to intimidate their antagonists. Prosecutor and the nine eye-witnesses were engaged in reaping and removing the crops from the land, at about 7 o'clock in the morning of the 3rd Aughun, when the prisoners, accompanied by a number of other persons, came

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Case of
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and others.

tumultuously up from the neighbouring village of Saccardihee and commenced cutting and carrying off the *dhan*, growing on prosecutor's land. The greater number of the party were armed with *lattees*, but Lochundoss had a small *tanghee* in his hand. The prisoners committed with Khetoo, Kalee and Kisto Raies, (sons of Lochun Roy, who have absconded,) surrounded the prosecutor and the deceased, who, with Gunganarain and Digumber, the sons of the former, were guarding a heap of grain which was on the ground, and some more which was on a *saggur*, or cart, and commenced beating them to make them give up the same; prosecutor and the others were soon driven aside, but the deceased stood firm and resolutely declared that he was a brahmin and would not give up his property. Upon this, the blows of all were directed against him alone and the prisoner, Hurri Roy, No. 6, who had a heavy *lattee*, about five feet long and as thick as a man could grasp, raised it above his head, with both hands and brought it down on the left side of the head of the deceased, with such violence, that he fell at once to the ground. When there, some one, either Rajoo, No. 8, Siboo, No. 9, Bissoo, No. 10, or Lochun, No. 7, for the witnesses differ on this point, cried out "What! is this *brahmun salla* still alive!" Whereupon the latter struck deceased a blow, with his *tanghee* somewhere on the back of his head and the whole party fled or went off, with the plundered *dhan*, in the direction of Saccardihee. Prosecutor and his party then picked up the deceased, wetted and wiped his face and walked him a little way towards home (about half a mile.) He then said he could go no further, and sat down. A *doolee* was subsequently obtained and he was taken in the same day, to the officiating joint-magistrate at Bancoorah. He was then insensible and died the same night, without having been able to utter a word. The civil assistant surgeon was absent in the interior, but the native doctor, Radhamadhob Roy, witness No. 15, made a very careful autopsy of the corpse which shewed that deceased had been slain by a *lattee* blow, down the left side of the head, which had burst the skull on the opposite side, where there was great extravasation of blood, both on the dura mater and within the brain. Six other slight wounds and bruises, apparently inflicted by sticks, were found on the body and a seventh, also slight, over the eye, which might have been given by the *tanghee* as the skin appeared to have been cut and not broken.

The evidence of the nine eye-witnesses, with the exception of that of No. 7, Bhoyrub Baoree, is sufficiently consistent, and satisfactorily establishes, that the prosecutor's party were unarmed; that the prisoner, Rajoo, No. 8, was the leader and instigator of the attack made upon them; that Lochun Doss, prisoner No. 7, was the ryot he meant to induct into the land; that the prisoner, Hurri Roy, No. 6, violently slew the deceased;

that prisoner No. 7, aforesaid, struck him with his *tanghee* after he had fallen, and that the other prisoners committed, with those who have absconded, struck, hustled, or hemmed in, the deceased, before, or when he received the fatal blow. There is also reason to believe, that the prisoner Hurri Roy, No. 6, was deputed by Gopal Pator, Sirdar Ghatwal of Anchooree, a noted villain, to collect and organize the party, which invaded the prosecutor's land.

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and others.

The apprehension of the prisoners and the sooruthal were duly sworn to. A *tanghee* was produced, which was found in the house of the prisoner Hurri Roy, No. 6, but it is not clear that it is that which Lochun Doss, No. 7, used, and the *lattee* of the former was not found. The upper portion of the skull of the deceased, which had been preserved by the native doctor, was examined by the court and presented the appearance of having been burst, on the right side.

The prisoners, one and all, pleaded not guilty and defended themselves by alleging *alibi*, at various places, and that the pretended eye-witnesses were all, either connections, co-parceners, employees, or debtors of the prosecutor. The evidence of *alibi* was discrepant and quite unworthy of credit, and the court see no reason to doubt the evidence of the eye-witnesses, though the Hazarees certainly have some thing to do with the prosecutor, through the land he holds, and the other witnesses are mere employees. Had their evidence been false, futile allegations of *alibi* would not have formed the only answer to it.

The futwa of the law officer finds the prisoner Hurri Roy, No. 6, guilty of the wilful murder of the deceased, Damoodur Banerjea, "*bee zun-o-ghalib*," or violent presumption, and all the other prisoners of *musharikut*, or aiding and abetting in the said crime.

It also declares the prisoner, first abovenamed, obnoxious to "*seasut*" and the rest to "*akoobut*," and designates the prisoners, Rajoo Sain, No. 8, and Lochun Doss, No. 7, as the principals and leaders of the attack, made on the prosecutor's property.

I concur in every thing the futwa contains, with the exception of the finding of "wilful murder," against the prisoner, Hurri Roy, as I am not certain that he intended to slay the deceased, when he struck him so violent a blow with his *lattee*. The law officer was evidently influenced, in his opinion, by the weight and size of the weapon and the malice presumable from the way in which the blow was struck, and the effects shewn to have resulted from it. Mine is based on the considerations, that no previous anger, nor malice, on the prisoner's part, has been proved, and that a strong man, like the prisoner, when his blood is up, is apt to lose all command over his hand, and thus may kill, where he only intended to hurt, or punish.

Such being the case, I hold the prisoner Hurri Roy, No. 6,

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and others.

to be guilty of culpable homicide and the others of aiding and abetting him in the said offence, and would recommend that they be sentenced as follows. Hurri Roy, No. 6, to ten years' imprisonment with labor in irons, in the zillah jail, inclusive of two years in lieu of corporal punishment. I do not consider a less punishment sufficient, with reference to the reckless violence with which the fatal blow was given, and the fact that there is reason to believe, that the prisoner acted the part of a bravo on the occasion.

The prisoners, Rajoo, No. 8, and Lochun Roy, No. 7, as principals, to seven years' imprisonment, with labor in irons, inclusive of two years in lieu of corporal punishment.

The prisoners 9, 10, 11, 12 and 13, to six years' imprisonment with labor and irons, inclusive of one year in lieu of corporal punishment.

The sentences I recommend are severe, but I consider them necessary for due intimidation of the bad characters, who abound in the neighbourhood of the spot on which the offence was committed.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I consider it to be clearly proved from the evidence that Hurri Roy, No. 6, dealt the blow, which resulted in the death of the deceased, Damoodur Banerjee, and that he was also struck by Lochun Doss, No. 7, but with what effect, does not so clearly appear. Lochun and Rajoo Sain were the parties concerned in the removal of the crop from the disputed land, and the violence was at their instigation. The other prisoners were all present, aiding and abetting.

It is observed that all plead *alibis*, and several of the witnesses for the defence have deposed to the absence of the accused from the spot, on the morning of the occurrence, while others deny all knowledge of the circumstance. The evidence, such as it is, is not sufficient to invalidate that for the prosecution, which is direct and positive, and the prisoners, although some of them state that the prosecutor's witnesses are chiefly servants or indebted to him, do not explain why they should be falsely accused by him; only Lochun, No. 7, has asserted his claim to the land as opposed to prosecutor, which only corroborates the latter's story, that it was the prisoner's coming to carry away the crops by force, which led to the act.

Concurring with the sessions judge in convicting Hurri Roy of culpable homicide, I, nevertheless, under all the circumstances of the case, think that the proposed punishment is too slight. I therefore sentence him to fourteen years' imprisonment, with labor and irons in banishment, and uphold the terms of imprisonment recommended by the sessions judge to be passed upon the other prisoners, that of Nos. 7 and 8, being also in banishment.

Corporal punishment being illegal in cases of culpable homicide, by Circular Order, dated 21st May, 1824, no portion of the imprisonment is to be considered as in lieu of it.

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Case of
HURRI ROY
and others.

PRESENT :

SIR ROBERT BARLOW, BART., *Judge*.

GOVERNMENT,

versus

SHUHUROOLLAH PURAMANICK.

Rungpore.

CRIME CHARGED.—Wounding Russomoney with intent to murder her.

1854.

Committing Officer.—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

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Tried before Mr. William Bell, sessions judge of Rungpore, on the 30th December, 1853.

Case of
SHUHUROOL-
LAH PURAMA-
NICK.

Remarks by the sessions judge.—With reference to the 2nd paragraph* of your letter No. 1326, of the 23rd ultimo, I have the honor to submit the original papers connected with the above case.

Prisoner convicted of wounding with intent to murder a prostitute with whom he was sleeping. The sessions judge having under Reg. XII. of 1829, sentenced the prisoner to fourteen years' imprisonment, stating that he considered the punishment inadequate, was informed that under

The case is one of wounding with the intent to kill. The magistrate states "it is proved that on the night of the 15th April, the prisoner went to the house of Russomoney, a prostitute, and slept with her in the same bed. She was suddenly awakened from sleep by feeling something sharp drawn across her throat, and starting up seized the prisoner with a *dao* in his hand, with which he had inflicted a severe and dangerous wound in her throat. He had an accomplice in the room, but on her giving the alarm, they both ran off, leaving the *dao* and a cloth belonging to the prisoners. There can be no doubt that their object was to murder her and obtain possession of her property. Next day the chowkeedar reported the occurrence to the police, and the darogah going to the shop, arrested the prisoner in consequence of the deposition given by the witnesses, Nos. 1 and 2. The prisoner confessed to having been concerned with Neamut

* Extract, paragraph 2. from a letter to the sessions judge of Rungpore No. 1326, dated the 23rd November, 1853.

With reference to your remarks on the case of Shuhuroollah Puramanick, No. 9, of statement No. 6, the court observe that you should have referred the case to the Nizamut Adawlut under Section 6, Act 31, of 1841, you are requested to do so now, expunging the case from statement, No. 6, and entering it in statement, No. 7, which with the figured returns, is here- with sent back for correction and re-submission.

Sec. 6, Act XXXI. of 1841, he should have referred the case for final orders to the Sudder Court.

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NICK.

in the crime. Neamut was in consequence subsequently apprehended. Before me both prisoners pleaded not guilty, but it was proved that the knife belonged to Neamut and the cloth to the prisoner. On the 25th April, the prisoner escaped from the jail, and shortly after the cutcherry and malkanah were burnt, and the papers of the case, the cloth and handle of the knife were destroyed, the blade was so changed in appearance by the action of the fire as not to be capable of identification. The depositions of the witnesses were however taken afresh and copies of the darogah's report procured from the thannah, but the thannah confession was lost. There not appearing sufficient evidence against Neamut, he was released on the 4th June. On the 10th August, the prisoner was recaptured and put again on his defence, he pleaded an *alibi*, but could not state when the crime was committed so that his witnesses were not sent for. Those named by him in his first defence were examined, but proved nothing in his favor.

Before the sessions court the witnesses state the case nearly similar to what they deposed in the foudjarry court, making due allowance for their depositions being taken a second time by the magistrate, owing to the fire. Some weeks after the occurrence and before me, upwards of four months after, the wounded woman states that she did not know the prisoner previous to the day, on which the occurrence took place; that he then came to her house and gave her eight annas, remaining there for the night and sleeping with her; that about 12 o'clock she was awake and found him cutting her throat, and after a struggle, she freed herself and raised the alarm. The witnesses depose to finding her insensible, and hearing her version of the story when she recovered. Mr. Taylor, the apothecary, deposes to the serious nature of the wound and the prisoner himself confessed before the two witnesses, Nos. 9 and 10, the whole plot, only making himself an accessory instead of the principal, but the woman's recognition is so clear that no doubt remains on my mind as to his guilt.

In his defence, before the magistrate and this court, he pleads an *alibi* and brings five witnesses into court to establish it, but utterly fails; they all deny any knowledge of his whereabouts at the time. The law officer convicts, and I agree.

There is something so revolting in a man going to a defenceless female's house, and under pretence of enjoying her favors taking the opportunity of attempting to murder her, that I consider the punishment inadequate to the extent of guilt, and beg to recommend the case to the court's consideration for an enhanced sentence.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) The prisoner made his escape from jail some four months before he was recaptured. The wounded woman Russomoney

recognized him as the person who has committed the deed, when he was for the second time seized. The witnesses to his mofussil confession, when he was first captured, depose to the fact of the confession then made by the prisoner and also recognize him now. He pleads *alibi* at some place one and a half miles from the scene of the assault; his witnesses deny all knowledge of his movements.

The sessions judge had, with reference to a precedent at volume 5, page 176, Sudder Nizamut Reports, sentenced the prisoner to fourteen years' imprisonment with labor and irons. Section 6, Act XXXI. of 1841, has however superseded the Law, XII. of 1829, upon which the precedent is grounded. The papers having been received upon a call from the court, I see no reason to doubt the prisoner's guilt. The sessions judge under instructions from this court has referred the case for final orders, but has made no recommendation as to sentence which should be passed.

The intent to kill is to be inferred, not only from the severity of the wounds inflicted on the woman Russomoney, but also from the confession of the prisoner when first apprehended. The case is an aggravated one, and merits imprisonment for life in transportation.

PRESENT:

J. DUNBAR, Esq., Judge.

GOVERNMENT,

versus

NGAPHYOOGL, E.

CRIME CHARGED.—Highway robbery attended with wounding.
CRIME ESTABLISHED.—Highway robbery attended with wounding.

Committing Officer.—Lieut. A. Fytche, principal assistant commissioner of Arracan.

Tried before Capt. Henry Hopkinson, commissioner of Arracan, on the 16th September, 1853.

Remarks by the commissioner.—On the 13th January, 1852, fourteen Burmese families left the village of Letput Gyoung, about four leagues from the village of Mengtoon, in the Burmese Territory for the purpose of immigrating to this province; on the 16th of the same month having arrived at Khyeng Aystoung, a halting station well on this side the boundary, indeed between one and two days' march from the frontier, they were set upon on midday by a party consisting of about twenty-five men, and headed by the Burman Thoogree Ngakhan, and the prisoner

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The prisoner in pursuance, as he alleged, of an order from a Burmese officer, committed certain acts of violence and robbery in the British Territories; he was convicted and sentenced by the commissioner, whose order was confirmed in appeal.

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Ngaphyoogle, who fired a volley into them, which wounded one man, the prosecutor, Tsaumho, though not severely; the immigrants thereupon fled, but two of their party, Shewetsau, and Ounglha, were captured, and together with some cows, and buffaloes, a musket and some other trifling articles, of property amounting in all to Rupees 52-8, were carried off into Burmah; the prisoners and the musket were presented to the Mengtoon Myowon, he kept the musket and released the prisoners, one of them, Shewetsau, a witness in the case and brother to the wounded man, Tsau, who went then to reside with the prisoner, Ngaphyoogle, and the two in the following March accompanied by some other Burmese families, came to settle at Aeng where, on the 10th April, 1852, Ngaphyoogle was apprehended.

Ngaphyoogle both in the magistrate's court, and before me, fully admitted all the circumstances of the attack on the prosecutor and his party, and his participation therein as recorded above, but he pleaded in his defence that he acted under the orders of the Mengtoon Myowon, and in discharge of his duties as Khengok to pursue, arrest, and bring back all Burmese subjects attempting to leave the country with their families.

From the evidence adduced, I have no doubt that the prisoner, Ngaphyoogle, was what he represents himself to have been, a Khengok, in the service of the Myowon, and that in the perpetration of the offence of which he has been convicted, he was not actuated solely by the ordinary motive of highway robbers and dacoits, the mere desire of plunder, but rather from a wish to carry out the order to stop all fugitives, which, I believe him to have received and to show his zeal to his superior, the Myowon, by bringing him in some prisoners.

It remains to be considered what effect these circumstances should have upon his sentence.

On the one hand the judgment refuses to recognize him, as equally culpable, with the common freebooter or dacoit, with men whose offences are outrageous against all laws in every country, for what he did was a crime only because he did it in Arracan, in Burmah it would have been his duty to have done it; but on the other hand do persons deserve other than the treatment of robbers, and dacoits, who dare to violate British Territory, at whosesoever's instigation, and commit sanguinary crimes of outrage and pillage therein, on the helpless and oppressed people who seek British protection; are our subjects to be robbed because a Burmese Myowon orders it, and the robber to be held extenuated.

I have been unwilling to give the prisoner the full punishment belonging to the crime of which he has been convicted, but his offence, with all the mitigating circumstances that may attach to it, still remains one that must be sternly dealt with, and which it concerns us to take care is understood to be one that

cannot be justified. I have therefore recorded the sentence entered in column twelve against the prisoner.

Sentence passed by the lower court.—Ngaphyoogle to be imprisoned for four years with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar). The prisoner, in his petition of appeal, admits the perpetration of the acts charged against him, but seeks to justify himself, on the ground, that he committed them in the execution of his duty to his master. This plea cannot avail him. He is an Arracanese by birth, and acknowledges that he has been in the habit of frequently visiting Akyab on business, so that he must have been well aware, that the order of a Burmese officer could be of no force to justify robbery and violence in the British Territories. The offence is one of much gravity, and the prisoner should be thankful that he has been dealt with so leniently.

The sentence is confirmed.

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Case of
NGAPHYOO-
GLE.

PRESENT:

H. T. RAIKES, Esq., Judge.

GOVERNMENT AND SADURDY,

versus

KALACHAND (No. 10 APPELLANT,) AND SUKTEERAM
(No. 11 APPELLANT.)

Rungpore.

1854.

CRIME CHARGED.—1st count, with committing dacoity attended with wounding of Sadurdy, prosecutor, in his house; 2nd count, with knowingly having in possession property acquired by the above dacoity. Property plundered valued at Rupees 178-13 annas.

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KALACHAND
and another.

CRIME ESTABLISHED.—Dacoity attended with wounding.

Committing Officer.—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. William Bell, sessions judge of Rungpore, on the 17th November, 1853.

In a conviction of dacoity attended with wounding, proved by the confessions of the prisoners and the recovery of stolen property in their possession, their appeal was rejected.

Remarks by the sessions judge.—This dacoity occurred in the jurisdiction of thannah Cheelmary, on the 12th of June, 1853, (31st Joist, 1260.) The prosecutor lodged information through his brother, Dilmahomed, on the 13th of June, and the darogah immediately proceeded to the spot, and the following day arrived there, and arrested the three prisoners, Tair Mahomed, No. 6, Nepal, No. 7, and Ata, No. 8, and soon after sent them into the sudder. And on the 22nd made his final report. On the 22nd of July, Dilmahomed presented a petition to the magistrate stating

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and another.

that the darogah had not searched the houses of the persons he suspected, and begged another darogah might be sent. The magistrate complied with the request, and directed Locknath Majoomdar to proceed there, and act as the prosecutor wished. He arrived there on the 7th of August, and on the following day and the 9th, arrested prisoners, Nos. 9, 10 and 11, and found certain property, and they all confessed.

The prosecutor or witnesses to the dacoity do not in any way allude to the prisoners Kalachand, No. 10, or Sukteeram, No. 11, in the investigation carried on by the 1st darogah; but in his deposition taken by Locknath Majoomdar, on the 7th of August, Dilmahomed, brother to the prosecutor and witness, No. 1, states that he suspected them, and in consequence they were arrested and confessed, producing two *thalees* and one *lota*, which they declared to be part of the stolen property which was recognised by the prosecutor as his.

Witnesses, Nos. 8 and 12, prove the mofussil confession of Kalachand, No. 10, to have been free and unbiassed.

Witnesses, Nos. 15, 16 and 17, prove the sudder confession of Kalachand, No. 10, to have been voluntary.

Witnesses, Nos. 2 and 8, prove the mofussil confession of Sukteeram Dass, No. 11, to have been free and unbiassed.

Witnesses, Nos. 15, 16 and 17, prove the sudder confession of Sukteeram Dass, No. 11, to have been voluntary.

Witnesses, Nos. 2 and 8, prove the production of the stolen property by the prisoners 10 and 11.

The prisoners before the court deny.

Kalachand, No. 10, says the property is his, but his witnesses, Nos. 64, 65, 66, all deny all knowledge of it.

Sukteeram, No. 11, denies his confessions and declares no property was found in his house, and that he was at home at the time as his witnesses can prove. They, Nos. 67 and 68, deny all knowledge of his whereabouts.

I tried the case alone under Act XXIV. of 1843, and found the prisoners guilty.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for ten years.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The two prisoners appealing are the only persons convicted by the sessions judge. They made full confessions in the mofussil and before the magistrate, and gave up property as part of the plunder. Before the sessions, they pleaded *not guilty*; but could not clear themselves on the defence set up by them.

Sukteeram in his appeal states that his master proposed to him this robbery, but he refused to go, and he got others to commit it, and concealed two *thalees*, which were part of the stolen property. When his master was arrested on suspicion and ill-treated by the police, he sent to the prisoner to point out

where the property was concealed, thus he did, and the darogah, having colluded with his master, got him accused of the robbery. Kalachand asserts that the *lota* sworn to by the prosecutor is his own property. As I see nothing in favor of the prisoners, I reject the appeal.

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Case of
KALACHAND
and another.

PRESENT :

H. T. RAIKES, Esq., *Judge*.

BHUTTOO AND GOVERNMENT,

versus

DHOWTAL SINGH RAJPOOT, STYLING HIMSELF JHUM-
MUN SINGH.

Behar.

CRIME CHARGED.—1st count, wilful murder of Bhoolee Gwalla ; 2nd count, maltreating and beating the deceased, which caused his death.

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Committing Officer.—Mr. A. G. Wilson, officiating magistrate of Behar.

Case of
DHOWTAL
SINGH RAJ-
POOT.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 20th of December, 1853.

Remarks by the sessions judge.—This trial is supplementary to those of the same prosecutrix *versus* Hemun Dosadh, Achuraj Singh Rajpoot, and Boodhoo alias Boodhna, decided by the superior court, on 28th August, 1852, vide page 311, of the printed decisions.

Prisoner convicted as an accomplice in wilful murder, and sentenced to fourteen years' imprisonment. His plea of mistaken identity urged at the trial, was not proved.

On the afternoon of the 1st of April last, Hemun Dosadh (prisoner, No. 3.) Gorahit of Sarpore, was plundering the prosecutrix, a resident of the same village, of some cow-dung fuel for the use of the village authorities, during which he struck her as also Bhookhun (witness No. 1,) her brother-in-law, who was the first to come to her assistance. Both had marks of blows on their persons, on their appearance at the thannah the same day; Bhoolee Gwalla, the prosecutrix's husband, arrived shortly afterwards, and Hemun had gone off to complain to the village authorities then present at the threshing floors, of which there were two outside the village, and returning with Achuraj (prisoner No. 4,) and several other retainers (absconded); they bound the deceased's and Bhookhun's hands behind their backs, and maltreating them were carrying them off captives. The facts thus far stand essentially acknowledged on both sides, but there are two versions of what followed. One that the prisoners and others were taking their two captives off to Beechee, about a mile distant, where Sheolal Singh, the lease-holder, resided, which so terrified the deceased that he killed himself by

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throwing himself down the village well. The other that on approaching the well, they found Byjnath, the lease-holder's nephew there, who, striking the deceased a blow on the head with a heavy stick, killed him on the spot, and then to conceal the crime, caused the body to be thrown into the well.

The prisoner, Dhowtal Singh, now under trial, was one of the accused, on whom and others their fellow-retainers, then reported as having absconded; the convicts of the original trial, threw the blame of having maltreated the deceased.

The evidence to the prisoner's guilt is the same as that reported on in the original trial, but it must be noted that the prosecutrix and witness in chief, Bhookhun Gwalla, subsequently perjured themselves by denying recognition of the principal accused, Byjnath, the lease-holder Sheolal Singh's nephew, and these retainers master, by which he escaped the ends of justice. Vide trial Government *versus* Musst. Bhoosia and Bhookhun, under date 4th March, 1853, page 287, of the Printed Decisions.

The prisoner, calling himself Jhummun Singh, pleaded "not guilty" and that he was never in Byjnath's uncle Sheolal Singh's employ, but this is disproved by his capturer, Dowlut Khan; witness No. 5's testimony, who recognized him in a party about to start for Bengal for pilgrims from having served with him in Sheolal Singh's employ, when he was known by the name of Dhowtal, as also by Waris Ally (witness No. 6.) duffadar of the jail, who, used to see him in attendance on Sheolal Singh now a convict in jail. The prisoner produced several witnesses, who simply deposed after a set tale to his being called Jhummun Singh, without being in any way able to disprove his not having been one of Sheolal Singh's retainers.

The futwa of the law officer convicts the prisoner on the 2nd count, and declares him liable to discretionary punishment by *accoobut*.

I find no doubt of the prisoner's identification, as Dhowtal one of the deceased's oppressors with his fellow retainers, the convicts as consistently named from first to last, and now so fully recognized in person. I can convict him like those who have been convicted before him of nothing short of being an accomplice with them in the wilful murder of the deceased, which their own tyrannical and oppressive conduct, aided as best bespoken by the indisputable fact of the body having been taken out of the well with its arms pinioned, and for which the countenance of their own employer cannot in the least hold them excused, but rather aggravates it, when happening in their presence on an unfortunate and in reality unoffending victim, rendered defenceless by their wanton pinioning; I would sentence him like the others to fourteen years' imprisonment in labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T.

Raikes.) The particulars of this case are given in the report of the trial of Hemun Dosadh, Acharaj Singh and Boodhoo (charged with the wilful murder of Bhoolee Gwalla) in the printed reports of this court for August, 1852, pages 311 to 318.

I agree with the presiding judge in the view he has taken of this case, and deeming the evidence on record sufficient to convict the prisoner, now before the court, of being actively employed with others previously convicted of maltreating the deceased, whose death is clearly traceable to such maltreatment, I convict him, as an accomplice in the murder laid to his charge, and sentence him to fourteen years' imprisonment with labor and irons.

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Case of
DHOWTAL
SINGH RAJ-
POOT.

PRESENT :

A. DICK, Esq., *Judge*.

GOVERNMENT AND OTHERS,

versus

DIRGOPAL SINGH.

Bhaugulpore.

CRIME CHARGED.—1st count wilful murder of Byjoo Singh and Chummun Singh; 2nd count, wounding with intent to murder Surubjeet Singh, Salim Singh and Gopal Jha, prosecutors.

Committing Officer.—Mr. H. Döveton, deputy magistrate of Mudhyphoor.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 17th December, 1853.

Remarks by the sessions judge.—The case was tried in presence of a jury of native gentlemen of the highest respectability.

The prisoner pleads not guilty, denies that his name is Dirgopal, says it is Gobindlal, in short mutters and assumes the appearance of mental imbecility.

The facts of the case are these. On the evening of the Usthom, Doorga Pooja in October last, a party was assembled at the house of Surubjeet in the village of Tehra for the purpose of worship. Prisoner was one of the party, having come with his relation, Dureao Singh, who resided in the village and was in the habit of frequenting Surubjeet's house, but seems to have sat himself with a sword in his hand; he was the only one with a sword, Sumbjeet invited him to come and sit more among the rest, but he did not answer, and on Surubjeet's getting up and moving on towards the place of worship, prisoner suddenly drew his sword and rushing forward, struck him across the side of the head, slicing the left ear and flesh of the cheek, so that they hung down on his neck. Surubjeet ran out to the village well, where he was joined by others. In the meantime prisoner had attacked Gopal, another

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DIRGOPAL
SINGH.

Prisoner convicted of wilful murder, sentenced to imprisonment for life in the zillah jail.

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of the party in Surubjeet's house, and wounded him severely on the back. He then ran out to the well, where the neighbours were binding up Surubjeet's wound, attacked Chammun, cut completely through his arm in two places, so that the pieces hung attached by the skin only, and then struck him across the loins, killing him on the spot. Byjoo was the next victim, and being struck several times on the neck and belly, was also killed on the spot. At this time Salim was also severely wounded in several places on his arms and legs. The prisoner then escaped into the jungle where he was apprehended early the next morning, his clothes all bloody and the sword in his hand; he was much excited and tried to escape from his captors.

The evidence against the prisoner is most complete, being that of the three wounded men with their wounds hardly healed and four eye-witnesses Nos. 1, 2, 3 and 4, all quite consistent in their depositions. Prisoner's confessions, at the thannah and before the deputy magistrate of Mudhypoor, are clear and quite sufficient for his conviction, they are fully attested before this court, as given voluntarily and with a clearness and readiness quite irreconcilable with the mental imbecility now assumed. The confession at the thannah is simply that it came into his head to kill somebody, and that he killed and wounded Byjoo, Chummun, Surubjeet, Salim and Gopal as accused. That before the magistrate is more complex; he there stated that he had come from his own country in zillah Agra some nine months before, had married and settled in Bunvaree, a village eight or nine coss from Surubjeet's dwelling; that he had afterwards on his brother Dureao Singh's invitation gone to the village of Tehra; that the people of Tehra had abused him and once accused him of madness and threatened to bind him and again to sacrifice him to Doorga. That on the evening in question Dureao, Gopal, Chummun, Byjoo, Surubjeet and Salim, ran after him with swords and *lattees*; that he drew his own sword to defend himself; that he was struck on the head by a *lattee*, on which he wounded Surubjeet and killed Chummun and Byjoo with his sword and wounded also Salim and a brahmin, Gopal Jha. The inquest on the bodies of the two murdered men held by the darogah on the spot, is sufficiently attested by witnesses, Nos. 7 and 8. The evidence of the native doctor, regarding the injuries of the wounded men is fully attested by witnesses, Nos. 9 and 10.

* December 6th. The case was at this stage* postponed pending a reference to the civil assistant surgeon, regarding the state of mind of prisoner, and in order to call in three witnesses from prisoner's village to speak to his former conduct and character.

† December 17th. These witnesses were this day† sent in and examined in open court, in presence of the prisoner and the former jury. They are numbered in the calendar

Nos. 19, 20 and 21, they depose most decidedly and convincingly to the sound state of mind of prisoner, during the two months and more that he lived in their village.

Prisoner refuses to defend himself further, than by reiterating his denial of being guilty of the charges brought against him.

One witness only (No. 4.) of the three called by him as to character, appears in court. No clue could be obtained to the residence of the other two, the one appearing is also an eye-witness to the fact of the murder and wounding. He here swears that he is utterly ignorant of prisoner's former character.

The jury bring in a verdict of guilty of both charges of the calendar, in which I entirely concur.

The facts of this sanguinary case are too few and simple to call for recapitulation. There can be no doubt of prisoner's guilt to the full extent charged against him; the only question is with regard to his state of mind, when the act was committed. It will be observed that no mention of any mental infirmity is made throughout the thannah and magistracy proceedings; the first appearance of any such imbecility, was that I have mentioned in the third paragraph of this report; it struck me immediately that the appearance was feigned and with the concurrence of the jury, I continued the trial to its conclusion as far at least as the case for the prosecution went. The prisoner was then remanded, as noted in the 6th paragraph, for evidence as to his former, and a medical opinion as to his present state, the nature of this evidence has been described in the 7th paragraph; the correspondence,* with Mr. civil assistant surgeon Allan, will be

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January 28.
Case of
DIRGOPAL
SINGH.

* From the sessions judge of Bhaugulpore to the civil assistant surgeon of Bhaugulpore, No. 73, dated 6th December, 1853.

I have to request the favor of your closely examining the prisoner, Dirgopal Singh, with a view to ascertain whether he is in sound state of mind. He has committed a most atrocious murder, itself seemingly an act of madness, but the witnesses for the prosecution all depose to his sanity and former good behaviour, and no mention is any where made of aberration of intellect. His confessions of the crime, at the thannah and before the magistrate, were clear and complete, but before this court he denies his own name and the crime charged against him and assumes an air of madness, which necessitates a careful scrutiny on your part as to its reality or otherwise.

I would thank you to have him, if possible, separately confined and minutely observed and to report the result to me as soon as possible. Great care should be taken that no opportunity is given him of doing injury to any one.

From the civil assistant surgeon of Bhaugulpore to the sessions judge of Bhaugulpore, dated 17th December, 1853.

I have the honor to acknowledge the receipt of your letter, No. 73, of the 6th instant, and in reply to report on the state of mind of Dirgopal Singh, a prisoner in the jail hospital.

In accordance with your request the prisoner in question has been placed under close surveillance by myself and my assistant, Baboo D. Chatterjee, for the last fortnight, but considering we might be better able to detect

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found with the record. It corroborates my opinion that the muttering and idiotic manner of the prisoner, before this court, was feigned with a view to escape the extreme penalty of the law. The prisoner was aided in acting this part by a very forbidding aspect, and the low development of his mental organs. I am fully convinced, however, from close observation and the concurrent testimony of the civil assistant and sub-assistant surgeons, that there is not the least ground for recommendation to mercy. The deed was savage, unprovoked and sanguinary to a degree; the only real sign of madness was the act itself, objectless as it appears from all the evidence before us. The only conjecturable cause for this wholesale murder is one, which might have been induced by the prisoner's religious feelings. Human sacrifice is held to be propitiatory to the deity in whose worship the party, of which prisoner formed one, was engaged, and to this heathenish superstition the act of prisoner must be ascribed; the reasoning faculties necessary to produce such results

either real or feigned insanity, by allowing him to mix at large with the other hospital patients, I preferred this course to the one you recommended, so that every action of his amongst his fellow-prisoners has been carefully noted and watched, and the result of our opinion, I beg now to report in detail.

During the fortnight the prisoner has been under supervision, I have been unable to detect any thing like feigned or real insanity, his behaviour has been quiet and peaceable, and free from excitement of any description. He has at times mixed freely with the other prisoners, conversing to a certain extent rationally with those around him; sometimes, however, he would give answers foreign to the questions put, and when asked his name, gave different names on every occasion when questioned on the subject.

His appearance, particularly in the formation of his head and caste of features, displays a low scale of mental development, but this is by no means uncommon with people of his class, who often more resemble the animal in mind than the human being, endowed however with sufficient low cunning to carry out any project that they may have determined on; it is possible therefore that his incoherent answers and denial of name may be feigned, though I have been unable to detect him; as it is, it is the only symptom of imbecility or weakness of intellect, I have been able to discover.

But this species of imbecility or weakness of intellect ought not to be considered as a form of insanity; it pervades generally the class of men amongst whom the prisoner ranks, it is more a low scale of development of the cerebral functions, owing to the want of culture of the mental faculties, it does not destroy that ability which we all possess in common of distinguishing truth from falsehood or right from wrong, and judging from the experience I have had of cases of a similar nature, I have generally found that with men of the prisoner's stamp, the reasoning powers were always clear enough on any matters affecting their own interest, however idiotic they might be in appearance or conversation.

Judging from all that has come before me of the prisoner's character and disposition, during the last fortnight, I am of opinion that the prisoner's intellect is not so impaired as to prevent him distinguishing right from wrong, nor are his mental faculties of so weak a nature as would render him not accountable for his acts, whether good or evil. In this opinion, my assistant, Baboo D. Chatterjee, fully coincides.

cannot be held irresponsible to the laws they outrage. I have no hesitation in recommending that Dirgopal Singh be hung.

I have ordered a reward of eight rupees to be given to Sahoo chowkeedar, who apprehended Dirgopal with the drawn sword in his hand on the morning of the 10th October, 1853.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The previous moody state of the prisoner, just before perpetrating the fatal deeds; the sanguinary deeds themselves, utterly motiveless; and the confessions, wholly imaginative, raise a strong doubt of the sanity of the prisoner when he committed the guilty acts. The Court therefore convict the prisoner of murder, and sentence him, under the circumstances, to imprisonment for life in the jail of the zillah, Bhaugulpore. See Bhuwun Singh's case Nizamut Adawlut reports volume I. page 359, and subsequent case decided by Nizamut Adawlut, on the 18th December, 1839. A. D., by Abercromby Dick, Temporary Judge.

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Case of
DIRGOPAL
SINGH.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND MEHAR,

versus

MUTIULLAH PUTWAREE (No. 27,) RUSOOL NOSYA (No. 28,) ASHKER NOSYA (No. 29,) SONAULLA (No. 30,) AYN NOSYA (No. 31,) HAPA NOSYA (No. 32,) AND FAZIL NOSYA (No. 33.)

Rungpore.

CRIME CHARGED.—Wilful murder of Poornah Bewah, the grand mother of Mehar, the prosecutor.

1854.

Committing Officer.—Mr. A. W. Russell, officiating magistrate of Rungpore.

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Tried before Mr. William Bell, sessions judge of Rungpore, on the 10th January, 1854.

Case of
MUTIULLAH
PUTWAREE &
others.

Remarks by the sessions judge.—It appears that the prosecutor, Mehar, was seized by Mutiullah and Rusool as a forced coolee, on behalf of the zemindar (Murthuna) as a regiment was passing through the district, and abuse and blows were exchanged by the parties, but the prosecutor ran away and the next day, Saturday, went and complained to the zemindar, who refused to hear him. He, therefore, returned home and, on his way, he passed by Fazil's house, there he saw Mutiullah, who said "here is Poornah's grandson, he will give information, seize him," upon which he ran away and gave intimation to Hazee-chowkeedar, that Mutiullah and others were beating his grandmother. The chowkeedar and some neighbours accompanied him to

The prisoners were acquitted, the evidence for the prosecution not being deemed trustworthy.

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Case of
MUTIULLAH
PUTWAREE &
others.

Fazil's house and there they found no one, but Kanchun told them that Mutiullah and the rest of the prisoners had carried Poornah (the deceased) across the *chur* to throw her into the river. They all started in pursuit, and after some time came up with them, the deceased was being dragged along by them and after some time they threw her down and escaped, she was picked up and revived a little, sufficiently to tell before all her neighbours that she had been called by a woman named Serai (mother of the prisoner, No. 33,) and that then she was set upon by the prisoners and beaten, her clothes taken from her and she was wounded in the leg with a *dao*. Early in the morning she died. The body was sent into the sudder station, but unfortunately in such an advanced stage of decomposition that a medical examination was impossible.

Hajee, No. 1, states that the prosecutor told him, the prisoners were beating his grandmother, and in consequence, he accompanied him to Fazil's house, but not finding her there and hearing from the prosecutor that they had taken her away, they commenced searching the *chur*, and that upon overtaking them, he recognized prisoners, Nos. 27, 28, 29, 30, 31, 32 and 33, who let the woman fall and ran away. He assisted Poornah, who was naked and wounded in the leg, but still breathing; after drinking a little water, she rallied and then told the neighbours she had been called out by Serai and beaten and ill used by the prisoners. She died in the morning. Before the darogah, he did not mention the prisoners, Nos. 28 and 32, nor prisoner No. 32, before the magistrate, but he says she mentioned them all, and the mistake must be in the writing.

Nusur, No. 2, heard the prosecutor complain to the chowkeedar, and he accompanied them to see what was going on; while searching the *chur* he heard the noise of people running and heard that Mutiullah say, "Rusool, the woman's people have come," and he recognized Nos. 27 and 28, who were dragging the woman; that on their overtaking them, they threw down the body and ran away, she was wounded and naked. He did not remain there, but went home before she said any thing.

Fool Mahomed, No. 3, accompanied the chowkeedar and came up when the deceased was picked up. He did not see any of the prisoners; heard the deceased say, all the prisoners had beaten her. The darogah has not written the names of 28 and 33, in his thannah deposition, but witness states he mentioned them.

Fool Mahomed 2nd, No. 4, heard the noise and going there, found them all, round the woman, who said that prisoner, No. 27, and others, had beaten her. Before the magistrate he mentioned Rusool's (28) name, he says he does not recollect, nor did he name all those written down by the darogah.

Goree, No. 5, supplied the *jamp* to carry her and heard her

implicate all the prisoners. Before the magistrate he did not mention 33, but he declares he did.

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Hoorah, No. 6, heard the woman implicate all the prisoners.

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Nachir, No. 7, assisted in the search and saw them, but was not near enough to recognise the men carrying her off. Heard her implicate all the prisoners.

Case of
MUTIULLAH
PUTWAREE &
others.

Mutiullah, No. 10, joined the search and came up with the deceased, who implicated the prisoners, 27, 28 and 32.

Ruma Nosya, No. 13, Went and saw the woman after she was brought to the chowkeedar's house and heard her implicate all the prisoners; in his evidence before the magistrate, the name of the prisoner 33, does not occur, but he declares he mentioned it.

Khulkoo, No. 26, the son of the deceased (apparently half-witted and with an impediment in his speech) says, she told him that the prisoners, 27, 29, 30, 32 and 33, had beaten her.

Mutiullah, No. 10, Ruma Nosya, No. 13, Tajoo Kazee, No. 15, prove the deceased was not ill before, but in good health.

Fool Mahomed, No. 4, Bhasoo, No. 9, prove the darogah's examination of the deceased's body.

Defence of the prisoners.—The prisoners throughout deny and plead not guilty before me.

Mutiullah No. 27, states that he was at home and that he pressed Mehar, and thence the quarrel, and produces witnesses to prove, he was at home which they swear to.

Russool No. 28, denies, and says he was at his brother-in-law's house and produces him and his servant and two of his brothers, who say he was there.

Asker No. 29, denies, and says the woman died on Saturday; the witnesses he brings, know nothing about it.

Sonaullah No. 30, denies, says he was with Mutiullah and that there is a quarrel. His witnesses all say he was with Mutiullah, but they know nothing of a quarrel.

Ayn Nosya No. 31, denies, and says he was with Mutiullah, and produces the same witnesses as Sonaullah and Mutiullah had done, who say he was with Mutiullah.

Hapa No. 32, says he was with Russool at Lall Mahomed's and produces the same witnesses as he had done, who swear to it.

Fazil No. 33, denies, and says he had gone to see the tamasha at the hát and produces witnesses to prove it.

Verdict of the jury and recommendation of the sessions judge.
The jury, consisting of Joggunnath Roy, Ishan Chunder Roy and Ramjadeen Sein, return a verdict of guilty against Mutiullah and Russool, and acquit the rest. I consider the charge borne out against all and look upon Mutiullah, the putwaree, and Russool, as the principals, but as it cannot be proved by whose hand the injuries were inflicted, from which the woman died, I

1854. recommend that Mutiullah and Russool, be imprisoned for fourteen years each, and the others for seven years each.

January 28. *Remarks by the Nizamut Adawlut.*—(Present: Mr. B. J.

Colvin.) I do not think that the evidence against the prisoners is such as to warrant their conviction.

Case of MUTIULLAH PUTWAREE & others. There are material discrepancies in the depositions of the prosecutor, Mehar, and of witness, No 1, Hajee, which greatly affect their credibility. For instance, at the thannah, the former said that he did not see the deceased beat, and he was not aware of her having been maltreated, until on going to Fazil's house to enquire about her, a woman called Kanchun told him what had happened, and that the prisoners were carrying off the deceased to the river; but before the magistrate and sessions court, he deposed that knowing what was being done inside of Fazil's house to deceased, he went for assistance, and on coming back, Kanchun told him only of her removal towards the river. This deponent at the thannah also stated that he could not recognize the prisoners on the *chur*, except No. 27, by his voice, on account of its being a cloudy night, but before the magistrate and sessions judge he swore that he saw, and recognized them all. Again witness, No. 1, at the thannah, deposed that he only recognized the voice of No. 27, calling out Mutiullah, but that he saw no one, as it was dark, and there was jungle, which prevented his seeing. Nevertheless he deposed before the magistrate and the sessions judge that he saw the prisoners distinctly, adding before the latter officer that it was bright moon-light, which enabled him to do so. Besides these discrepancies, it is observed that the companions of the above two persons have not deposed, that they saw all the prisoners on the *chur* so as to recognise them; therefore their recognition by these two is extremely improbable.

The main evidence, besides that of the above two persons, on the point of recognition, is also legally defective, as it is founded on the verbal statement of the deceased, who, moreover, while she is described to have been almost senseless, is at the same time stated to have twice named, not only the prisoners, but the particular injury she received from each.

That a quarrel existed between the prosecutor and No. 27, is admitted by the prosecutor, and as he was the aggrieved person, I think it as probable that he has got up a false accusation against the prisoners, as that they killed the deceased.

I acquit all the prisoners and direct their release.

The sessions judge should not have recapitulated the evidence, but have given a clear and concise statement of the case, as required by Circular Order, No. 9, dated 31st August last.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT,

versus

DOORGACHURN DHOBA (No. 35,) KASHEE BOUREE (No. 36,) SATCOUREE DOOLLYA (No. 37,) NOBIN KOURA (No. 38,) GOPAL BAGDEE (No. 39,) LOKA HAREE (No. 40,) AND MODHOO DOME (No. 41.)

Hooghly.

1854.

CRIME CHARGED.—1st count, with having committed a dacoity in the house of Neetye Newgee, and also committed a dacoity attended with wounding in the lodging-house of Bucktar Singh at Maukoondo, on the night of the 25th March, 1852, in which property to the amount of Rs. 13-10, was plundered; 2nd count, having belonged to a gang of dacoits.

January 30.

Case of
DOORGA-
CHURN DHO-
BA and others.

Committing Officer.—Baboo Chunder Seeker Roy, deputy magistrate of Hooghly, under the commissioner for the suppression of dacoity.

Seven prison-
ers convicted
of dacoity and
of having be-
longed to a
gang of dacoits
and sentenced
to transporta-
tion for life.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 12th January, 1854.

Remarks by the officiating additional sessions judge.—The dacoities charged against the prisoners, in the first count of the indictment, occurred in the following manner. Bechee Koura was the leader of the gang and got them together. They first assembled at the house of a relative, and from thence proceeded along the rail-road to a tank, where they cut bamboos and converted them into weapons of offence. They moved on to a plantain garden and remained there till about midnight, when they made the attack; one of the gang was helped over the outer wall on the shoulders of his comrades and opened the gate. The party entered the premises and, finding the master of the house asleep in the verandah, bound and beat him. They then commenced plundering. After having done so, to their hearts' content, and while leaving the premises, some of the gang proposed to plunder the entire neighbourhood and with this view an attack was made in the house of Bucktar Singh, one of the railway jemadars, who was reputed to have a large sum of the Company's money in his custody. The outer-gate leading to his premises was found open, but on breaking down the inner door, the foremost of the gang, Sham Thakoor, was cut down by the people of the house and severely wounded on the head, shoulder, and side. On his being driven back, the prisoners, Loka Haree, No. 40, and Modhoo Dome, No. 41, advanced to the attack, but were as fiercely met as their comrade, and forced to retire wounded, which wounds they still show. The Sirdar, Bechee, and the ap-

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Case of
DOORGACHURN DHOBA
and others.

prover, Nemai Nekari, who were armed with loaded muskets presented their pieces, but the guns fortunately missed fire, owing to the powder being damp from rain. The gang then retreated without having secured any plunder, and with some difficulty succeeded in carrying off the wounded man, Sham Thakoor, whom, it is said, they afterwards made away with in consequence of the severity of his wounds. These particulars will appear in reference to the statements made by the witnesses marginally*

* Witnesses indicated, who also prove the prisoners' complicity Nos. 1, 2, 3. in several other dacoities with organised gangs, under established leaders, and their association with these leaders.

The dacoities charged and the confessions of crime made by the prisoners, Loka Haree, No. 40, and Modhoo Dome, No. 41, before the deputy magistrate under the commissioner for the suppression of dacoity, will be proved by the evidence of the

† Witnesses witnesses as per margin.† These confessions will Nos. 7, 8, 9. be found to be an unqualified admission of guilt, both as respects the dacoities in question and others; proof of the occurrence of which is furnished in the record, and their connection with organized gangs of dacoits.

All the prisoners plead not guilty before this court, and state that they have been falsely accused by the approver-witnesses from malicious motives. The prisoners, Loka Haree and Modhoo Dome, call persons to bear testimony to the respectability of their character and manner of life. These parties fail to establish the plea. The witnesses named by the other prisoners were not in attendance.

I convict all the prisoners of the crimes charged, the first count on the approver's testimony tendered on the trial and the collateral proofs the record furnishes, and, the second count, the prisoners Doorgachurn Dhoba, No. 35, Kashee Bouree, No. 36, Nobin, alias Hakora Nobin Koura, No. 38, and Gopal Bagdee, No. 39, on the same evidence, and the prisoners Loka Haree, No. 40, and Modhoo Dome, No. 41, on their own confessions, and would recommend that they all be sentenced to transportation for life with labor and irons. Satkouri Dulia, the prisoner No. 37, of the calendar, was not put on his trial in this case, having already been convicted by me of having belonged to a gang of dacoits, and recommended to be transported for life, vide my letter of reference No. 3, of the 6th January, 1854.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar). The depositions of the approvers, on oath, correspond with the statements made by them in their original confessions, which were taken down, with every possible precaution against collusion; they are corroborated, too, by the voluntary confessions, before the commissioner for the suppression of dacoity, of prisoners Nos. 40 and 41, by the evidence of the parties whose houses were attacked, as charged in the first

count, and by the records, yet forthcoming of the occurrence of many of the other dacoities, in which the prisoners are stated to have been engaged.

Concurring in the conviction, I sentence the prisoners to be imprisoned for life in transportation beyond sea.

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Case of
DOORGA-
CHURN DHOBA
and others.

PRESENT:

J. DUNBAR, Esq., *Judge*.

GOVERNMENT,

versus

BOOLAI SIRDAR (No. 7,) GUMBOOLLAH SIRDAR (No. 8,) BABOOLAH ALIAS BAWOOL PRAMANICK (No. 9,) MUNGUL PRAMANICK (No. 10,) ASHKAR SIRDAR (No. 11,) BAWOOL PRAMANICK (No. 12,) MAHADEE ALIAS MOHURDEE KOOLOO (No. 13,) MOHUDDEE SHAH (No. 14,) LOOTYE PRAMANICK (No. 15,) FUZZU CHOWKEEDAR (No. 16,) JEETOO CHOWKEEDAR (No. 17,) HEERAMUN SHAH (No. 18,) KHOOSDEEL SHAH (No. 19,) KENOO PRAMANICK (No. 20,) AND SHONATUN SHAH (No. 21.)

Rajshahye.

1854.

CRIME CHARGED.—1st count, riotously, in an armed body, invading the village of Pachbareah *alias* Shonapoor, and maliciously setting fire to the houses of thirty-four people, namely, Mathoor Sirdar, Fukeer Sirdar, Haroo, Mohabut Sirdar, Felloo, Gayes Pramanick, Bawool Pramanick, Ramcoomar Shah, Mohurdee, Newajee Shah, Shum Sha Shah, Geenoo Shah, Ramsoon-der Shah, Chanroo Pramanick, Chamaroo, Jeetoo Pramanick, Jameer Pramanick, Mukkly, Adoo Shah, Haranoo Neelman, Asshin Pramanick, Dilmohamed Pramanick, Moddhoo Shah, Dataram Shah, Kokee Pramanick, Goree Pramanick, Chokoo Moolee Pramanick, Bawool Manjee, Abodee, Nolee Khan, Secund Newajee and Alloo Bewah, forcibly plundering their property, committing an assault and wounding Mohabut; 2nd count, aiding and abetting in the above; 3rd count, being accomplices to the forementioned crimes.

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Case of
BOOLAI SIR-
DAR and
others.

CRIME ESTABLISHED.—Prisoners, Nos. 7 and 8, invading a village tumultuously, and setting fire to houses. Prisoners, Nos. 9 and 10, giving orders in committing the above crime. Prisoners, Nos. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, aiding and abetting in the outrage.

Two prisoners, convicted by the sessions judge of giving orders to invade a village and set fire to the houses, and sentenced to five years' imprisonment, acquitted on appeal.

Committing Officer.—Baboo Gopal Lall Mitter, deputy magistrate of Nattore.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 31st August, 1853.

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Case of
 BOOLAI SIR-
 DAR and
 others.

Remarks by the sessions judge.—Although this trial occupied three days in the hearing, from there being a hundred witnesses named in the calendar, a very few words will suffice to describe what occurred. On the morning of the 30th of January last, the prisoners, who are mostly inhabitants of Rungowan, sallied forth, “with a strong hand and a multitude of people,” and invaded the adjoining village of Panchbareah. They were met by some of the villagers, and after a parley, and some pelting with clods, an order given by Nos. 9 and 10, (connected with the ijaradar of Pungoan), first the prisoner, No. 7, set fire to a stack of thatching grass belonging to witness No. 1, and then to his house. After this No. 8, with the same brand, set fire to the house of witness No. 43, who was absent or not at home. The ryots of Panchbareah then fled, and either from the fire spreading or the prisoners and others setting fire to the houses, which, it is impossible to say, one hundred and ten were burnt to ashes. It will be seen, the charge included the forcible plundering of property; but the witnesses, who, in fact, were the complainants or parties aggrieved, when questioned as to what they had lost, invariably referred to the list or schedule of the property they had given in to the darogah; however as no search had been made for the property, and none had been discovered, the investigation into the fact of plundering would have been nearly interminable, and in the event of its being proved would not greatly have enhanced the crime with which the prisoners stand charged. I therefore informed the government prosecutor, as well as the law officer, that it would be best to drop this count altogether, and they agreed, consequently, with the exception of the witnesses, numbered 1, 2, 4, 6, 43 and 44, none were specially examined on this point. Some were only asked if they had lost property, and how many of their houses had been burnt. Those who were examined at length to the circumstances of the case (except to the property alleged to have been plundered) were numbered 1, 2, 3, (who were wounded and knocked down, and which assault in my opinion is brought home to No. 11) 4, 6, 7, 8, 9, 10, 11, 13, 14, 26, 28, 29 and 30, and of these 8 are Mussulmans and 8 are Hindoos. Nearly all are inhabitants of Panchbareah, but I think it impossible to reject their evidence, because they were the parties who suffered from the conduct of the prisoners and others.

The motive for the outrage seems to have been a determination to resent and punish the ryots, who had gone to Panchbareah from Pongowan, that is, left their former zemindar, styled by courtesy Rajah Anand Nath Roy, who is so inflated at being the adopted son of a widow of the second son of the late Rajah Ramkishon of Nattore, and puffed up with his own importance, that I have no hesitation in stating that he must

indirectly, have been cognizant and assenting to the violent attack made on his neighbour's village by his ijaradar and the defendants. Such outrages, though possibly of frequent occurrence in former times, can never be tolerated now without making the occupants of the soil (what their ancestors no doubt were) mere serfs of the rajahs and zemindars who own the lands.

No. 11 confessed, and his confession was fully proved to have been voluntarily made. All the prisoners set up *alibis* that they were absent at *hauts*, or on visits, or cultivating crops elsewhere, and two chowkeedars (Nos. 16 and 17,) that they were then at Nattore, reporting that "all was well," but the witnesses in support of the several *alibis*, signally failed to establish them, and could not speak with any certainty to dates.

Nos. 9 and 10 pleaded, being in Calcutta selling oil there, and that they had been complained against in the magistrate's court of the 24-Pergunnahs. The complaint, however, was lodged subsequent to the date of the outrage, leading to their commitment and trial, and as they only put in appearance on the 2nd of May, before the deputy magistrate, three months after the charge against them was laid, I considered it unnecessary to postpone the case for the witnesses to their *alibi*, as it was evident it (like the complaint at Allipore) had been got up for the nonce.

The futwa convicts Nos. 7 and 8, of actually setting fire to the houses of two of the ryots, and the consequent destruction of the houses of others in Panchbareah.

Nos. 9 and 10, it convicts of giving orders, and the rest of the prisoners it convicts of being present, aiding and abetting in the outrage complained of, and which I hold to be an aggravated case of arson. Approving entirely of the futwa, I have sentenced the prisoners as herein stated. Nos. 11 to 21, were possibly mere tools, but as neighbours, I consider their conduct to have been wholly unjustifiable and the measure of punishment awarded is the least that could be adjudged for the ends of justice.

Sentence passed by the lower court.—Prisoners, Nos. 7 and 8. To seven years' imprisonment with labor and irons. Prisoners, Nos. 9 and 10. To five years' imprisonment with labor and irons. Prisoners, Nos. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21. To three years' imprisonment with labor and an iron ring round each leg, respectively.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The prisoners, Nos. 9 and 10, are convicted of giving the orders, under which the other prisoners acted. These men pleaded *alibi*, asserting that they were in Calcutta, at the time the outrage is said to have been committed, that is, on the 30th January, 1853, corresponding with 18th Magh, 1259. The sessions judge did not consider it necessary to postpone the case, to allow of the examination of their witnesses, because a complaint lodged against them, in the court of the magistrate of the

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others.

24-Pergunnahs, was so lodged, *subsequent* to the date of the outrage, with which they were charged before him; from which circumstance, and from the fact, that they had delayed long in putting in their appearance, he concluded, that the *alibi* and the complaint at Allipore had been "got up for the nonce."

Mr. Montriou and Baboo Kishenkishore Ghose urged strongly, that the reasons given by the sessions judge, for not postponing the case, are insufficient, and that he was not justified in concluding, that the *alibi* pleaded by the prisoners was a false plea, till he had heard the evidence in support of it; they remarked that the evidence which the prisoners were prepared to give, to the fact of their having been in Calcutta, and of their having been defendants in a case preferred against them, in the 24-Pergunnahs, was quite distinct, and that the record of the evidence, taken before the magistrate, would show how important to their case, was the evidence of the witnesses they had cited, and how reasonably they might rely upon it, for entire exculpation.

On referring to the proceedings of the magistrate, I find that seven witnesses, residents of Calcutta, had been summoned for the defence, and deposed to the fact of the prisoners having been in that city, from about the 10th of Magh, 1254, up to about the 20th Chyite following. There is a Roobukari also, showing, that the magistrate had had under consideration, a case sent to him, by the magistrate of the 24-Pergunnahs, in which one Kenoo Ghose had charged the prisoners with assaulting him, on the 20th Magh.

The prisoners were, unquestionably, entitled to have their witnesses examined at the trial. Mr. Montriou states, that they did arrive at Bauleah, within a day or two after the sentence had been passed, but however this may be, the trial as regards the prisoners should have been postponed, till the witnesses had either come into court, or satisfactory reasons had been given for their non-appearance. On this ground, it would be proper to quash the whole of the convictions, and to direct the sessions judge to take the evidence offered by these two prisoners, and then to give judgment in respect to all the prisoners in the case, as acquittal of the followers would probably be the consequence of the establishment of *alibi* on the part of those, who had been sworn to, as the leaders and order given by the witnesses for the prosecution. This course, however, it will not be necessary to adopt on this occasion, as the case for the prosecution is, in my opinion, so generally bad that acquittal is a necessary consequence. I come to this conclusion on the following grounds.

Bulloram Ghuttak the darogah, who took up the case on the 30th January, was suspended by the deputy magistrate on the 8th February, because he was not sufficiently energetic to please that functionary. His proceedings, however, so far as they had

gone, were retained on the record, and form the ground-work of the charges; yet the mode in which he conducted them, cannot be regarded without suspicion. The depositions of the eye and other witnesses (to the number of more than forty) were all evidently written on the 31st of January, that date having been subsequently altered, in some cases, to the 1st, in some to the 2nd and in some, to the 3rd February; so also, in regard to the lists of property, alleged to have been destroyed by fire, or carried away. The alteration of the date first entered is patent on the face of the papers, and would appear to have been done, with the intention of inducing a belief that the inquiry had been conducted, not hurriedly but with due deliberation; yet the design has been so clumsily carried out, that in some cases, the dates first given to the lists have been allowed to stand, while those on the corresponding depositions, have been altered.

The evidence is manifestly greatly exaggerated and on many most important points, so contradicting and inconsistent, that it cannot be received. The sessions judge states, that he could elicit no satisfactory information from the witnesses, as to the property they had lost, being always referred by them, to the lists they had given in to the darogah. On this account he dropped the charge of plunder altogether. This does not show well for the prosecution, but it looks still worse, when it is considered that the lists of property were all given in on the 31st January, shewing distinctly, what articles had been lost by burning, and what by plunder, the precise ascertainment of which point, within so very short a time, is the more extraordinary, as the witnesses declare that they were driven from the village by their adversaries. The exaggeration in regard to the property lost, is quite absurd, the sums claimed by the different deponents, who are all ryots of Panchbareea, vary from Rs. 50, to Rs. 5,000, and upwards, but not one article was recovered although the houses of the prisoners were searched by the police. The sessions judge it is true dropped the charge of plunder, but I deemed it necessary to see what the witnesses said on that point, in order, to test their credibility in regard to the other points, embraced in the charge.

In commenting on the contradictions and inconsistencies in the evidence, I confine my observations to the statements of the twelve witnesses, who swore to the identity of the prisoners at the trial; and to those of the first informer. Harro chowkeedar, who gave the first information of the attack, at the thannah, stated, that he had seen the prisoner Boolai come with a *teeka* or burning coal, and set fire to Mattoor Sirdar's house, and this he repeated to the darogah, who was sent to supersede Bulram Ghuttak. In the Foujdary, he said that Boolai had raised the fire, by bringing a long grass torch, and firing a stack of dry grass. Fearing probably, that he might be asked to explain these gross contradictions, he did not make his appearance at the

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trial. Muttoo Sirdar himself says that it was a lighted torch which Boolai brought, and so do the other witnesses, but there is much variation as to whether the fire was applied to the house, or to the stack. The subjoined memorandum will show that the witnesses have not been particular as to the number of persons whom they implicate.

Of the prisoners brought to trial
Muttoo Sirdar named in the Mofussil Foudjary Sessions court,

	1	10	15
Haroo Puramanick,	11	11	15
Mohabut Sirdar,	6	6	3
Pheloo Shah,	6	11	5
Aradhun Shah,	4	7	15
Ramcoomar Shah,	8	8	9
Ramsounder Shah,	7	10	15
Bazoo Shah,	5	5	3
Baool Puramanick,	5	9	9
Muhabdee Shah,	2	6	6
Shums Shah,	6	9	9
Chouroo,	6	6	6

Further, in the mofussil, prisoner No. 10, was named only by two, and No. 9 by three witnesses, as having given orders. In the foudjary they were named by eight, and again, at the trial No. 9, is sworn to by three, and No. 10, by only two witnesses, as the persons who gave the orders; the witnesses examined on each occasion being the same. It is to be noted too, that while the witnesses who now swear, that Nos. 9 and 10, were the order-givers, gave no such evidence in the mofussil; those who did first swear to prisoners Nos. 9 and 10, having been the order-givers, do not swear to this at the trial.

Even in regard to the man who was wounded, there is irreconcilable contradiction; he himself (Mohobut) both in the mofussil and in the foudjary, said, that Heeramun alone wounded him, but at the trial, he brought in Ashkur also. I can only account for his doing so, by observing that some of the other witnesses had said in the foudjary, that Ashkur *alone* had wounded Mohobut.

The whole of the witnesses (as having each, matter of complaint for himself) were examined on oath, at every stage of the inquiry; this puts the contradictions and inconsistencies, in their several depositions, in a stronger light. That there was either an affray or a riot of some kind, and that houses were burnt either intentionally or by accident, and property lost, is sufficiently probable, but there has been so much diversity and so much evident exaggeration in the statement of the witnesses brought forward to prove this, that it is impossible to arrive at any positive assurance, or strong presumption of guilt, as against any particular individual. The answer in the foudjary of pri-

soner No. 11, is designated by the sessions judge, as a confession, but I cannot regard it as a confession of the crimes charged ; it is only an admission that he was with a body of the adherents of the Rajah, who were about to attack the village of Panchbareeah, but that he fled, when he saw hostilities begun, between them and their opponents ; he added, that he did not know how the houses had been set on fire and saw no plunder.

I must give the prisoners the benefit of the doubts I entertain upon the grounds above stated, and acquit them.

They are accordingly directed to be immediately released.

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Case of
BOOLAI SIR-
DAR and
others.

PRESENT :

J. DUNBAR, Esq., *Judge.*

GOVERNMENT,

versus

PANAOOLLAH (No. 5,) AND USSEEMOODIN (No. 6.)

Backergunge.

1854.

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Case of
PANAOOLLAH
and another.

CRIME CHARGED.—No. 5, 1st count, perjury in having, on the 1st of April, 1850, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the late officiating magistrate of Backergunge, that he saw Boorhanoodin engaged in the riotous attack upon Kurreemoodin Sirdar's boat, in which Kurreemoodin Sirdar was wounded, and in having, on the 30th of May, 1853, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the present magistrate of Backergunge, that he does not recognize the aforesaid Boorhanoodin, such statements being contradictory of each other on a point material to the issue of the case ; 2nd count, perjury in having, on the 30th of May, 1853, deposed under a solemn declaration taken instead of an oath before the magistrate of Backergunge, that he does not recognize the prisoner, Boorhanoodin, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case. No. 6, 1st count, perjury in having, on the 1st of April, 1850, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the late officiating magistrate of Backergunge, that he saw Boorhanoodin engaged in the riotous attack upon Kurreemoodin Sirdar's boat in which Kurreemoodin Sirdar was wounded, and in having, on the 30th of May, 1853, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the present magistrate of Backergunge that the prisoner, Boorhanoodin, was not engaged in the riotous attack upon Kurreemoodin Sirdar's boat, in which Kurreemoodin

Two prisoners
convicted of
perjury in
contradictory
statements re-
garding the
identity of a
person, and
sentenced to
three years'
imprisonment.
Appeal re-
jected.

1854. Sirdar was wounded, such statement being contradictory of each other on a point material to the issue of the case; 2nd count, January 31. perjury in having, on the 30th of May, 1853, deposed, under a solemn declaration taken instead of an oath, before the magistrate of Backergunge that the prisoner, Boorhanoodin, was not engaged in the riotous attack upon Kurreemoodin Sirdar's boat, in which Kurreemoodin Sirdar was wounded, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

Case of
PANAOOLLAH
and another.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 29th October, 1853.

Remarks by the sessions judge.—The case against the prisoners is briefly this: about the beginning of 1850, there was a riotous attack upon the boat of one Kurreemoodin Sirdar by Teetun Sirdar and his adherents. The prisoners gave their evidence in the original trial of the case before the magistrate, in which they deposed to having seen Boorhanoodin on the side of the rioters.

A man by name, Boorhanoodin, having been apprehended, he was confronted with the prisoners, who refused to recognize him. For this perjury, they have been made over to the sessions.

The writers of the two former depositions of the prisoners prove that they were made before them, and that they were afterwards read aloud to the magistrate in the presence of the prisoners, and other respectable witnesses together with Kurreemoodin, on whose boat the attack was made, say that the Boorhanoodin, whom the prisoners refused to recognize, is the very person of that name, who was concerned in the attack. That he is brother to the son-in-law of Teetun Sirdar, the chief of the party, who made the attack. That he lived in Mirzapore, (where lived Teetun also) and that besides him there never was any other person of the same name in that village.

These things being deposed to, the question for decision is, whether there is proof that Boorhanoodin, present in the magistrate's court, is the same person previously named and that the prisoners have intentionally and deliberately committed perjury in refusing to recognize him.

The identity of the Boorhanoodin, lately brought to trial as the person who was concerned in the riot, is, I consider, fully proved, he is brother to Zeerafoolla, Teetun's son-in-law, who was punished in the same case, and he called himself an inhabitant of Mirzapore. Both are nearly related to Teetun, the chief actor in the riot; several witnesses have sworn to Boorhan's identity and also to the fact that at the time he lived at Mirzapore, there was no other person of the name of Boorhanoodin in that

village. Boorhanoodin himself at his trial had no cause to accuse the plaintiff and witnesses in the case, with conspiring to convict him, but said they were mistaken in supposing him to be the person formerly named. This is a very common defence, and is invariably resorted to when the accused has previously bought off the witnesses. From all this, I think, it cannot admit of a doubt that the party called Boorhanoodin, lately put on his trial, was the very person originally charged with the riot.

The prisoner, Panaoollah, lives in Mirzapore. The prisoner, Usseemoodin, lives at Rajpassa, the two are adjacent villages. Boorhanoodin, as I have observed above, also lived in Mirzapore, as proved by the witnesses, and as gathered from his brother Zeerafoodin's answer. Living then in the same village, or very near each other, it is impossible to suppose that the prisoners have in two years forgotten their acquaintance, or that they are really incapable of recognizing him.

I feel satisfied that the right Boorhanoodin was put before the prisoners, and that they knew him to be the same person against whom they gave former evidence, but that corruptly influenced, they wilfully and deliberately foreswore themselves in refusing to recognize him.

The law officer found the prisoners guilty on violent presumption and I sentenced them as shown in column 12, of the statement.

Sentence passed by the lower court. Each to be imprisoned for three years with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.) The prisoners, when called on for their defence, admitted that they had mentioned one Boorhanoodin, as having been engaged in the attack ; they asserted, however, that he was not the person produced, yet they summoned no witnesses to prove that there was another Boorhanoodin, resident in Mirzapore at the time, while the witnesses for the prosecution distinctly swear, that there was no other resident there, at the time, of that name. It is quite possible that the prisoners may have given false evidence, in saying that any Boorhanoodin was present at the attack, but there can be no doubt that the man now produced is the man, to whom they meant their evidence to apply.

The sentence is confirmed.

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Case of
PANAOOLLAH
and others.

A. DICK, Esq., Judge.

versus

Prisoners convicted of riot with culpable homicide and sentenced by the sessions judge to seven years' imprisonment. Appeal rejected.

**RAMDHUN MANJEE (No. 1,) RAMMOHUN MANJEE
(No. 2,) RAMESSUR MANJEE (No. 3,) AND NUDEAR-
CHAND MANJEE (No. 13.)**

CRIME CHARGED.—1st count, riot with the culpable homicide of Shadhoo Churn Garaun and the wounding of the prosecutor Pochy Garaun, and the witnesses Rychurn, Gopal, Mothoor and Gorachand Garaun; 2nd count, aiding and abetting in the above crimes.

CRIME ESTABLISHED.—Riot with culpable homicide.

Committing Officer.—Moulavy Gholām Ushruff, deputy magistrate of Bood Bood.

Tried before Mr. J. H. Patton, officiating additional sessions judge of East Burdwan, on the 10th November, 1853.

Remarks by the officiating additional sessions judge.—A dispute appears to have existed for a long time between the prosecutor and his party, and the prisoners and their adherents, relative to a parcel of land claimed by the former on an alleged purchase. The matter formed subject of a law-suit, which issued in favor of the purchasers, and it was in taking possession that the crimes charged against the prisoners were committed. The prosecutor and the witnesses for the prosecution were engaged in ploughing the land, when the prisoner, Ramdhun Manjee, arrived with a sword in his hand. He remonstrated at their proceeding and an altercation ensued. He then loudly invoked his party, and the prisoners and others appeared armed with sticks. At the bidding of one Okhil Ghuthok, a general assault was made on the prosecutor's party, and five persons wounded and left insensible on the ground. The part taken by each of the prisoners in the attack is distinctly spoken to, and the injured parties exhibited both contused and incised wounds, plainly indicating that the sword had been used in the outset. One Shadhoo Churn Garaun felled by a blow from the prisoner, Nudarchand Manjee, died on the following morning, and his death is ascribed by the civil surgeon to injuries of the head inflicted by a heavy stick. The other wounds were slight. Shadhoo Churn's dying declaration was recorded by the darogah and implicates all the prisoners, asserting that he, Shadhoo Churn, was knocked down by the prisoner, Nudarchand, and struck on the head by another whom he could not identify. The evidence is clear and for the most part consistent, and leaves no doubt on the mind as to the guilt of the prisoners. The

pleas set up by the prisoners scarcely amount to a defence. The prisoner, Ramdhun Manjee, states that hearing that the *kolus*, meaning the prosecuting party, were beating his aunt, he proceeded to the spot and received a blow on the head on which he ran off. The prisoners, Ramdhun Manjee and Ramessur Manjee, plead *alibi* in an adjoining field and the prisoner, Nudearchand Manjee, avers that he was beaten by some of the witnesses for the prosecution, while ploughing the land in question, and that the prosecutors gave the widow of Sadhurun Guraun 100 Rs. to charge him, the prisoner, with the murder of her husband instead of himself, as was her original intention. I examined fourteen witnesses on behalf of the prisoners, but their testimony completely fails to establish the points pleaded in defence. I consider all the prisoners equally culpable and have awarded the same punishment to all.

Sentence passed by the lower court.—To be imprisoned with labor and irons for seven (7) years each.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick). The court see no reason for interference with the sentences passed on the prisoners, petitioners. They observe, however, that the evidence is clear and conclusive against Nudcar of the culpable homicide as a principal, and he ought to have been sentenced accordingly. They further remark, that the reason assigned for not even summoning Okheeleyshur Ghuttuk by the deputy magistrate, Moulvee Gholam Ushruff, is far from satisfactory. In the petition of Gora Chand, and in the testimony of some of the witnesses at the thannah, and in most of the depositions taken before himself, Okheeleyshur is distinctly charged with having given the order for assault.

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Case of
RAMDHUN
MANJEE and
others.

PRESENT :

A. DICK, Esq., Judge.

Tirhoot.

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Case of
GOOTHOUL
MISSER and
others.

GOVERNMENT AND BEEJESSURLAL,

versus

GOOTHOUL MISSER (No. 3,) SHAIKH RUHMAN (No. 4,) LUNGUT (No. 5,) DOUL (No. 6,) GOORDEAL TE-WARRY (No. 8.)

CRIME CHARGED.—Nos. 5 and 8, wilful murder of Soondur Lall; Nos. 3, 4 and 6, accomplices in the wilful murder of Soondur Lall.

Committing Officer.—Mr. F. A. Glover, joint-magistrate of Chumparun.

Tried before the Hon'ble Robert Forbes, sessions judge of Tirhoot, on the 10th December, 1853.

Two prisoners convicted as principal and three others as accomplices in wilful murder, and sentenced, the former to transportation for life and the latter to 14 years' banishment.

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Remarks by the sessions judge.—In this commitment, seven persons having been originally indicted, either as principals or accomplices, one of that number (Purbhoo Raee) died in jail intermediately between commitment and trial, and another (Bootun) having been acquitted in this court, I refer the trial for the final orders of the Nizamut Adawlut, in respect of the remaining five prisoners, two of whom (Nos. 5 and 8,) are convicted by my law officer and myself, on violent presumption, of wilful murder, and the others (Nos. 3, 4, and 6) of being accomplices in that crime.

The prosecutor and deceased Soondur Lall, being brothers, were living together in mouzah Mamurka, in which also some of the prisoners resided, and the date of the murder being the 20th July last or 29th Assar 1260 F. s., the case is prosecuted jointly by Government and the brother of the deceased, who deposes that on the previous day (Tuesday) the prisoner Goothoul Misser, No. 3, came to the deceased and giving him a "*taveez*," or amulet, told him that it would be for his advantage to keep it. The deceased accordingly took the amulet and tied it round his waist, and from that time whatever Goothoul Misser told the deceased to do, the latter did. Next night (Wednesday) at about 8 o'clock Goothoul Misser came to the deceased's door and called him, and on the deceased coming out, the former said to him "come along," on which he (prosecutor) said to Goothoul Misser "where are you taking him?" to which Goothoul Misser made no reply, but the deceased at once said, "I am coming directly." Upon this both went outside, and almost immediately after the deceased returned. About midnight Goothoul Misser again came to the door and called the deceased, who came out and went forth with the former, taking with him 700 rupees in cash which he kept in a box, of which he had the key and which had been deposited with him by one Achumbit Bundeshwar of the Burhurwah opium agency, a gold mohur, and a ring the value of a gold mohur, which he kept separately. Although no one saw the deceased take the money with him, yet the witness Bhurosee Tewarry No. 3, who was sleeping near his (prosecutor's) door saw the prisoner Goothoul Misser come and call the deceased, who came out when the two went away together. Next morning he (prosecutor) missed his brother and observed that the lock of his chest was open and no money in it, and on Sunday (the 24th) he went and gave information at the thanah, and in his search for his brother was told on Monday the 25th, by Guneshu Gorait and Jodhee chowkeedar, that there was a corpse in the "Mitteekhand," a place in which potters dry their clay in mouzah Khujooriya, and that one arm was above ground. It being then evening when he (prosecutor) received this intelligence he waited till the next morning, (Tuesday) when accompanied by the witness Bhurosee Tewarry No. 3, and

some other persons, he proceeded to the Mitteekhand, whence however, as owing to rain having fallen and covered the ground the body was not visible, they returned home. On the Wednesday, however, the darogah and mohurrir, in consequence of being informed by the Gomashtha and Gorait, of the discovery of a body, having come to the spot, where also he (the prosecutor) and several others had repaired, dug out the corpse which he (prosecutor) and the witnesses Nos. 3, 4 and 5, recognised as the body of the deceased Soondur Lall, the throat being cut, the skull broken and the brains protruding and the amulet given the deceased by the prisoner Goothoul Misser being fastened round his waist. After this, on the darogah proceeding to make enquiry, two persons Goojur Kunkar, and Jeetun Chumar, witnesses Nos. 1 and 2, on being asked by the darogah, like other people, whether they knew any thing about the matter, deposed to having witnessed the murder of the deceased to which effect they gave evidence in full as detailed below. Some, too, of the prisoners made voluntary confessions (also below detailed); of their complicity in the crime, viz. their receipt of their share of hush money from the prisoner Goordyal Tewarry, after the perpetration of the murder and their being present when Goordyal Tewarry killed the deceased. On searching the house too, of the prisoner Purbhoo Raee, (deceased) a *turban* and *chudder* stained with blood, and identified by him (prosecutor) and two other witnesses, as those worn by the deceased Soondur Lall, were found. The prosecutor assigned as the cause of the prisoner's killing his brother that, in the case of one Moorsree, chowkeedar, charging the prisoners 5, 6, 7, 8 and 9, with being bad characters, the deceased Soondur Lall had given evidence substantiating that charge, besides which Lall Beharee his (prosecutor's) and deceased's cousin having taken out an attachment against the brothers of the prisoner Goordyal Tewarry No. 8, these latter resisted the process which led to their being imprisoned, which was another ground of enmity on the part of the prisoners towards his brother and himself.

The eye-witnesses Goojur Kunkar and Jeetun Chumar, Nos. 1 and 2, deposed that on the Wednesday night, when although it was a moonlight night the sky was cloudy and lowering, they had gone out to watch the paddy-fields near each other and distant about four beegahs from the village of Mamurka, when they observed at a spot about one beegah distance from their fields, and where four roads meet, four or five people collected together, and also two others proceeding from south to north, when one of the former called out to the latter "who's there?" to which the answer was "we are Goothoul Misser, and Soondur Lall." Upon this the prisoner Goordyal Tewarry calling the prisoner Doul by name, said to him *maro*, which however, the latter refused to do, upon which the prisoner Goordyal Tewarry dealt

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the deceased Soondur Lall a blow with a *lattee* which felled him to the ground, the deceased crying out "*bap bap*" After which Goordyal Tewarry saying "this *kyast* gave evidence of my being a *budmash*," ordered the prisoners Doul, Purbhoo (deceased,) Lungut, and Ruhman (whom he addressed by name) to carry Soondur Lall away in an easterly direction, and accordingly all the party together lifting up the deceased took him to a "Mit-teekhand" in a plain, outside the village, and laid him down on the ground; and Goordyal Tewarry said to Lungut "see whether he is alive or dead," in answer to which Lungut said. "There is a slight pulsation, or respiration." On this Goordyal Tewarry said, "If you have any weapon, finish him," to which Lungut replied, "I have done so." After this the prisoners all together dug a hole and buried the body in it.

The first of the above eye-witnesses, Goojur Kumkar No. 1, on being questioned as to how he saw the prisoner Goordyal Tewarry strike the deceased with a *lattee*, deposed that, during a flash of lightning, he saw Goordyal Tewarry lift up his *lattee*, immediately after which he heard the deceased fall down crying out "*bap bap*" from which he concluded that it was Goordyal Tewarry who struck the deceased. This witness recognized Goordyal Tewarry as well by his general appearance and stature, as by his voice when he heard him speak to his associates.

The 2nd eye-witness Jeetun Chumar, No. 2, without being questioned on the point, deposed to hearing Goordyal Tewarry, say:

"This *kyast* gave evidence of my being a *budmash*," immediately after which he (witness) heard the "*dummus*" (or expression of "*hoo, hoo*" used by a person striking violently,) of the blow of a *lattee*, and the deceased fell down crying out "*bap, bap*," from which the witness likewise concluded that it must have been Goordyal Tewarry who struck the deceased. This witness recognized the prisoner Goordyal from his voice, and the other prisoners from hearing Goordyal Tewarry address them by name.

Both these witnesses deposed to their recognition of the prisoner Goothoul Misser and the deceased Soondur Lall, both from their voices, and general appearance, and because these two were nearer to them than the rest of the prisoners; and both on being asked why they did not reveal what they had witnessed, until the arrival of the darogah, explained that it was through fear of Goordyal Tewarry that they kept silent, reasoning that if he (Goordyal Tewarry) could kill so respectable a man as Soondur Lall, he would not scruple to make away with them. They also deposed to hearing that the deceased had given evidence to the bad character of Goordyal Tewarry.

The witness Bhurosee Tewarry, No. 3, deposed that having on the Sunday preceding the murder, gone to a *haut* in mouzah

Sunoul, (near Mamurka,) he observed the prisoners Goordyal Tewarry, DouL, Lungut, and Purbhoo Raee, (deceased,) consulting together, and heard them saying among themselves, "Soondur Lall has given evidence to our being *budmashes*, come let us kill him,"—that four days after, he was sleeping, on the Wednesday night, at the door of the prosecutor's house, when about 2 o'clock in the morning, the prisoner Goothoul Misser came and called the deceased, who came outside, when both went to a little distance, and privately conversed together, after which both went away together in a northerly direction,—that early next morning he (witness) told the prosecutor of the deceased's departure, and he added that he had heard that the prisoners had killed Soondur Lall, because of his having given evidence against them as *budmashes*.

The witness Ructoo Kandoo, No. 22, deposed that about 8 o'clock at night of the *poornamasse* of *Assar*, he saw four persons assembled at the prisoner, Goordyal Tewarry's, door, who were consulting one with another and saying "Soondur Lall has given evidence of our being *budmashes*." On which Goordyal Tewarry replied "we will kill him, he shall not escape:" that among those persons he (witness) recognised the prisoners DouL, Goordyal Tewarry, and Lungut by their voices, but could not plainly identify their persons owing to its not being a clear night.

The body when discovered was too far decomposed to be sent into the station for medical examination, but the witnesses Bhurosee Tewarry, Imrit Lall, and Sooklall Thakoor Nos. 3, 4 and 5, deposed to recognising the body dug out of the "Mitteekhand," as that of Soondur Lall, identifying it as his, both by the stature, by the *dhotee*, and by the *taveez* or amulet, and a *chumouttee* or small box for holding lime found upon his person. They also noticed that the skull was broken, and the brain protruding, the throat being cut quite through all but about four inches behind, and the body being decomposed.

The witnesses Durup Pundey, and Tuhloo Tewarry, Nos. 12 and 13, deposed to being present when the prisoner Goothoul Misser of his own accord produced from behind his house, where they were buried in the ground, 21 rupees, which he said had been given him by Goordyal Tewarry, as his share of the hush-money, those witnesses also proving the voluntary surrender by one Bhurrut Kulwar of 5 rupees which the latter said the prisoner Buhman had deposited with him.

The witnesses Mooshur Kulwar, Ugr Thakoor, and Pranput Misser, Nos. 14, 15 and 16, depose to the finding in their presence of a *turban* and *chuddur* stained with blood in an earthen *kothee*, or small granary in the house of the prisoner Purbhoo Raee (deceased) which both the prosecutor and witnesses Bhurosee Tewarry and Ructoo Kandoo, Nos. 3, and 22, identified as those worn by the deceased Soondur Lall.

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It may also be mentioned that a knife was found near the spot where the body was discovered, and that a *lattee* and *kodalee* were also found in the house of the prisoner Goordyal Tewarry. But there is no satisfactory proof that any of these was that used by the prisoners, in the perpetration of this murder.

Both at the *thannah* and before the joint-magistrate the prisoner Goothul Misser, No. 3, made a voluntary confession to the effect that he was sleeping on the Wednesday night at the door of Biswas Lall's house, when about 2 o'clock the deceased, wearing his *turban* and *chudder* came to him and asked for tobacco, on which he (prisoner) asked him where he was going, to which the deceased replied, that he was going to Benares. Upon this he (prisoner) dissuaded him from going that night, but the deceased persisted, and set off, and he (prisoner) followed calling out to remain. When the deceased had got about one *beegah* behind, Goordyal Tewarry, Lungut Kunker, Dou, Purbhoo Raee (deceased) and Bootun (between whom and Soondur Lall's family there was enmity, in consequence of his having given evidence of their being *budmashes*,) came up. Goordyal Tewarry said to Soondur Lall, "who's there?" to which the latter answered "it is I," and on Soondur Lall asking Goordyal Tewarry "who are you?" the latter giving no answer struck Soondur Lall a blow with a *lattee* on the head, which broke his skull and he fell down senseless on the ground. He (prisoner) then went up to Goordyal Tewarry when the latter lifted up his *lattee* to strike him, and on his (prisoner's) running away Goordyal Tewarry laid hold of him, when he (prisoner) seized Goordyal Tewarry by the feet and implored him not to kill him, on which Goordyal Tewarry told him not to tell any one, which he (prisoner) promised he would not. At this time Ruhman also arrived and he, Lungut, and Bootun and Dou, and Purbhoo Raee carried Soondur Lall away to the "Mitteekhand" in *mowah* Khujooriya, and threw him on the ground when Dou sat on his breast, and Lungut cut his throat with a knife; after which they threw the body into the Mitteekhand, and filled up the place with earth. After this he (prisoner) asked Goordyal Tewarry why he had killed Soondur Lall, to which he replied, "Hold your tongue, and tell no one," on which account he (prisoner) said nothing on the subject to any one, and after the lapse of two days Goordyal Tewarry gave him 21 rupees, enjoining him at the same time to tell no one. When Soondur Lall fell down, a bundle fell from him, when he (prisoner) heard a noise like the jingling of money, which Goordyal Tewarry picked up as well as the deceased's *turban* and *chudder*, and the day before this event Bura Tewarry, the brother of Goordyal Tewarry, gave him (prisoner) an amulet which he told him to give to Soondur Lall or one of his relations, with a view to effect a reconciliation between them, which amulet he (prisoner) accordingly gave to Soondur Lall who wore it.

The prisoner Ruhmun (No. 4.) voluntarily confessed, both at the thannah and before the joint-magistrate, that about 2 o'clock in the morning of the Wednesday, he came from his lodging at the Burhurwah factory to Mamurka to get some medicine from one Doollee Malee, and that when he arrived where the four roads meet, he heard Goothoul Misser call out "oh Soondur Lall, where are you going?" to which the latter answered, "I am going to Benares." Upon this Goordyal Tewarry, Lungut, Dou, Purbhoo Raee, and Bootun came up, when Goordyal Tewarry immediately struck Soondur Lall a blow on the head with a *lattee*, which felled him to the ground. Seeing this he (prisoner) ran away when Goordyal Tewarry laid hold of him and told him not to tell any one, which he (prisoner) promised. After this Goordyal Tewarry said to Lungut, Dou and Purbhoo Raee, "Soondur Lall is dead, but if there is any life left in him, cut his throat and bury him." On which all four lifted up and carried Soondur Lall away to the Mitteekhand, whither Goordyal Tewarry took Goothoul Misser and him, (prisoner) and there Dou sat on deceased's breast and Lungut cut his throat with a knife, and having thrown the body into Mitteekhand, they filled up the hole with earth with a *kodalee*, which Bootun Aheer had in his hand. He (prisoner) wished to prevent them, but through fear of Goordyal Tewarry he dare not say any thing. After this he (prisoner) went home, Goordyal Tewarry having threatened him if he (prisoner) disclosed the matter to cut his throat in the same way. Goordyal Tewarry also took a gold mohur and gold ring, some rupees, how many he (prisoner) does not know, and *the turban* and *chudder*, and whatever Soondur Lall had about him, and after one day Goordyal Tewarry gave him (prisoner) sixteen rupees, ordering him not to tell any one, which he (prisoner) accordingly did not until the darogah came and asked him. Out of the above sixteen rupees, he (prisoner) gave five rupees to one Bhurut Kulwar and ten rupees to one Mussamut Musseerun Towairf to keep for him, having laid out one rupee in clothes.

The prisoner Langut (No. 5), voluntarily confessed, both before the darogah and joint-magistrate, that about 8 o'clock on the Wednesday, Shaikh Ruhman came to him and told him that Goordyal Tewarry was calling him, on which he (prisoner) asked "why does he call me?" which, however, Ruhman did not tell him, and he (prisoner) therefore did not go and Ruhman went away. Two hours after Ruhman again came and said "Goordyal, Tewarry wants you, the business is urgent." He (prisoner) asked what the business was, on which Ruhman said "on going there you will know?" He (prisoner) replied "my son is ill with cholera. I will give him his medicine and when at leisure, I will go?" Ruhman again went away and returning at midnight called him (prisoner) and took him to the west of Jeolall Nooniah's garden, where he observed Soondur Lall going along and

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Goothoul Misser following him. On Soondur Lall's reaching the four cross roads, Goothoul Misser called out to Goordyal Tewarry, "I have brought Soondur Lall," on which Goordyal Tewarry running up struck Soondur Lall a blow with a *lattee* on the head, which broke his skull and he fell down senseless and almost dead on the ground. After this Goordyal Tewarry told him (prisoner) Goothoul Misser, Ruhman, Doul, and Purbhoo to lift up Soondur Lall and carry him to the "Mitteekhand" in mouzah Khujooriya, which they all accordingly did. On arriving there Ruhman took out a knife from his waist and cut Soondur Lall's throat, and after throwing the corpse into the Mitteekhand, they all together filled up the place with earth and Goordyal Tewarry took a bundle and the clothes which Soondur Lall had on. He (prisoner) did not kill Soondur Lall nor cut his throat, and there was enmity existing between Goordyal Tewarry and the family of Soondur Lall.

The prisoner Doul (No. 6), made a voluntary confession, both at the thannah and before the joint-magistrate, to the effect that having been Soondur Lall's servant, he (prisoner) had about ten days before this quitted the deceased's service and was out of employ, and that owing to the existence of enmity between Goordyal Tewarry, and Bhugwan Dutt, Soondur Lall's brother, regarding rent, Goordyal Tewarry in league with Goothoul Misser, by the use of enchantment, had driven Soondur Lall out of his mind. On the Wednesday night he (prisoner) was asleep at Sookun Lall's door when Goordyal came and awoke him, and taking him with him told him there was some business to do, and when they got to the four cross roads, Goordyal Tewarry said to him (prisoner) "I will sit down; do you go to sleep. I have sent for Goothoul Misser and Shaikh Ruhman, and when they come, the purpose for which I have called you, will be carried into effect." He (prisoner) then lay down and about 2 o'clock Shaikh Ruhman called Lungut, and Goothoul Misser called Soondur Lall, and Goordyal Tewarry seeing the latter, said to him (prisoner), "Do you 'maro' Soondur Lall with a *lattee*, that is why I sent for you," to which he (prisoner) replied, that he "had eaten Soondur Lall's salt and would not kill him." Upon this Goordyal Tewarry getting up struck Soondur Lall a blow with a *lattee* on the head, when the latter fell down dead on the ground, after which Goordyal Tewarry laid hold of him (prisoner) and told him that if he did not carry the body away he (Goordyal Tewarry) would kill him. On this he (prisoner), Shaikh Ruhman, Lungut, and Goothoul Misser lifted up the body and carried it to the *Khujooriya* Mitteekhand, and Goordyal Tewarry took the rupees and gold mohur of the deceased, the jingling noise of which he (prisoner) heard; Goordyal Tewarry, also said to Ruhman, "If there is any breath left in him, cut his throat," on which Ruhman taking out a knife cut his throat and all together

buried the body in the Mitteekhand." After this he (prisoner) said to Goordyal Tewarry, "you have killed my master, give me some money also," to which Goordyal Tewarry answered, "I will give you some money, do not tell any one;" and on the Friday, Goordyal Tewarry gave him (prisoner) 50 rupees and told him to deposit the money with Bhuddye Sonar, adding that if he (prisoner) kept it himself he would spend it. He (prisoner) accordingly did so, and in consequence of his receiving this money, he did not reveal to any one what he had seen.

The prisoner Purbhoo Raee (No. 7, deceased) also voluntarily confessed, both before the darogah and joint-magistrate, that about 2 o'clock in the morning of the Thursday, Goordyal Tewarry came to him (prisoner) in his paddy-field which he was watching, and gave him a *turban* and *chuddur* to keep for him which he (prisoner) did, having put them into an earthen *kothee* or granary in his house.

All the above prisoners' confessions, both mofussil and sudder, were duly attested by subscribing witnesses.

The prisoners Goordyal Tewarry and Bootun (Nos. 8 and 9,) pleaded not guilty both at the *thannah* and before the joint-magistrate, as did the whole of them in this court.

The defence of the prisoners, Goothoul Misser and Rulman, was a repetition of the confessions of complicity they had made at the *thannah* and before the joint-magistrate, retracting, however, their admissions of having received any money from Goordyal Tewarry; the prisoner Goothoul Misser also denying having given the amulet to the deceased; these two prisoners only called witnesses to speak to their previous good character.

The prisoner, Lungut, pleaded an *alibi*, stating that on the Wednesday night his son was ill with cholera and that he did not leave home, but the witnesses he called, so far from exculpating him, deposed to their knowing nothing about him on the night in question, and indeed had heard that Goordyal Tewarry, the prisoner Lungut and others had killed Soondur Lall.

The prisoner Doul also endeavoured to establish his innocence by an *alibi*, pleading that having on the Tuesday gone to Bettiah, he came on the Wednesday to Mooteeharee. The witnesses, however, whom he called to prove where he was on the former day, knew nothing about him, and he had none to call for the latter day. Some, too, of his witnesses deposed to having heard that the prisoner had killed Soondur Lall.

The prisoner Goordyal Tewarry, (after commencing with a lengthened and altogether irrelevant narration,) also set up an *alibi* in his defence, pleading like the last prisoner, that having gone to Bettiah on the Tuesday, he came to Mooteeharee on the Wednesday, and that he there purchased a stamp paper on the Thursday morning in order to have a petition written. He also pleaded the existence of enmity between the prosecutor and

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1854. himself regarding rent and making over charge of papers. Four witnesses whom he cited to prove his having been at Bettiah on the Tuesday, flatly denied having seen him there, while three of them deposed to having heard that he and the other prisoners had killed the deceased. Four witnesses, whom the prisoner called to prove his having been at Mooteeharee on the Wednesday, deposed to having seen the prisoner at that place, but could not specify either the day or date.

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The prisoner Bootun (No. 9,) pleaded (as already mentioned) *not guilty*, and though his witnesses did not establish the *alibi* he set up in his defence, yet as of the two eye-witnesses, one only deposed to having heard him called by name by the other prisoners at the time of the murder, while the other witness did not recollect whether he was or was not named, and the only other criminating proof against him was, his being named by the confessing prisoners, my law officer and myself agreed in considering such evidence insufficient for his conviction, and he was accordingly acquitted and released.

In respect of the five prisoners referred, the *fatwa* of the law officer convicting the prisoners Lungut (No. 5,) and Goordyal Tewarry (No. 8,) on violent presumption of the wilful murder of Soonder Lall deceased, and the prisoners Goothoul Misser (No. 3,) Shaikh Ruhman (No. 4,) and DouL (No. 6,) of being accomplices in that crime, but declaring *kissas* barred in respect of the prisoners Lungut and Goordyal Tewarry from its not being clear by the hand of which of them, the deceased met his death, pronounces those prisoners liable to severe punishment by *accoobut shudeed*, and the remaining three prisoners to punishment by simple *accoobut*.

I agree with my law officer in this finding.

The evidence given at the *thannah* by the deceased, Soonder Lall, (and his relation Biswas Lall,) on the 16th of July last, in the case of Moosree chowkeedar *versus* the prisoners Goordyal Tewarry, Purbhoo Raee (deceased), DouL, Lungut, and others, herewith sent, establishes the fact of the deceased's having deposed to the bad character of Goordyal Tewarry and his associates four days before the date of the murder, and corroborating the testimony of the witnesses, who heard the prisoners consulting together as to what they should do in revenge for Soonder Lall's giving such evidence against them, and their, in consequence conspiring to take away his life, both some days before they carried their purpose into effect, and on the very night of the murder, satisfactorily accounts for the deep feeling of animosity and ill-will which without doubt instigated the prisoners to combine to take away the deceased's life. This too is confirmed by the tenor of the statements of some of the confessing prisoners on this point.

Under ordinary circumstances, the fact of the only two eye-

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witnesses to a murder not at once disclosing what they had seen, and keeping silent for some days would be sufficient to throw a doubt on their veracity and lead to the suspicion of their having been tutored and bought. In the present case, however, the reason assigned by the two eye-witnesses, viz., their dread of the prisoner, Goordyal Tewarry, for not revealing what they knew of the murder, until the arrival of the darogah and his questioning them, like others, on the subject, seems very reasonable and quite probable. In addition to the whole tenor of the evidence shewing Goordyal Tewarry to be a man of an oppressive character, much dreaded in his neighbourhood, and one who would not scruple to take full revenge on any one, who might render himself obnoxious to him, one Surba Thakoor (summoned by this court) deposed that Goordyal Tewarry had in 1851, forcibly carried off his daughter, a girl of thirteen years of age, and whom he has never since recovered, to which effect two other witnesses Sudasib Chowkeedar and Manik Gorait (also summoned by this court,) likewise gave evidence. The fact of Goordyal Tewarry's having taken away and forcibly married Surba Thakoor's daughter, is recorded in the joint-magistrate's final proceeding of the 8th July, 1851, in the complaint of Goburdhun Thakoor *versus* Sooklal Thakoor, to which effect five witnesses in that case bore testimony.

Falling short, as the testimony of the two eye-witnesses does, on some important points of full ocular proof, it may be remarked that supposing these witnesses to have been tutored, it would have been easy for them to have deposed unreluctantly to every particular. Observable too, as it is that not one of the prisoners has accused the witnesses of being tutored, or alleged any ground of enmity on the part of those persons towards any of their number, both the tenor of the evidence itself, marked as it is in my judgment, with every characteristic of veracity and probability, and the straightforward, fearless and unhesitating manner in which it was given, fully impressed my law-officer and myself with its truthfulness and credibility.

Accused or suspected of the murder, as no other person is either by themselves or by any one else, I am of opinion that the prisoners are clearly found guilty on satisfactory evidence, ocular and circumstantial, of having taken part, Lungut and Goordyal Tewarry as principals, and the other three prisoners as accomplices in the perpetration of a cold-blooded, deliberately planned, and revengeful murder; and I would recommend that the prisoners Lungut and Goordyal Tewarry, be sentenced to imprisonment for life, and the prisoners Goothoul Misser, Shaikh Ruhman and Doul to imprisonment for fourteen years, all with labor and irons, and in transportation.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.)
The Court, in concurrence with the sessions judge and the

<p>1854.</p> <hr style="width: 100%;"/> <p>January 31.</p> <p>Case of Goothoul Misser and others.</p>	<p>Mooftee, convict the prisoner Lungut No. 5, and the prisoner Goordyal No. 8, of being principals in the murder of Soonder Lall ; and the prisoners Goothoul Misser No. 3, Shaikh Ruhman No. 4, and Doul No. 6, of being accomplices in the said murder, and, under the circumstances, sentence the two former Lungut and Goordyal to imprisonment for life in transportation, and Goothoul and Ruhman and Doul to fourteen years in banishment with labor and in irons.</p>
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PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND OTHERS,

versus

CHUKOO MUNDLE (No. 1) AND BALO RAE (No. 2) Beerbhoom.

CRIME CHARGED.—1st count, No. 1, wilful murder of Fooloo Maria, son of Chundun Maria Kamar and Dookhnee Kamarin ; 2nd count, No. 2, being accessary after the fact to the wilful murder of Fooloo Maria ; 3rd count, aiding and abetting in the above mentioned wilful murder of Fooloo Maria. 1854.
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Committing Officer.—Mr. H. Rose, officiating magistrate of Beerbhoom. Case of CHUKOO MUNDLE and another.

Tried before Mr. W. T. Taylor, officiating sessions judge of Beerbhoom, on the 3rd January, 1854. One prisoner convicted of causing the death of the deceased, sentenced to imprisonment for life in transportation.

Remarks by the officiating sessions judge.—From the evidence produced for the prosecution it would appear, that on or about the 1st of Srabun 1260 B. S. two parties, named Teejoo Kamar and Muttee Kamar, came to the village of Patrole and took away the deceased Fooloo Maria, at the instigation of the prisoner Chukoo Mundle, to the village of Semria and from thence on the same day, he was removed, by the said prisoner, to the village of Hurreela five coss distant and there confined in an out-house on the premises of Chukoo, and about 2 or 3 o'clock A. M. of 2nd Srabun, strangled by him. A short time after, the corpse was carried by one Munnoo Pooghur and Bhowan Mahoto, accompanied by Chukoo Mundle and prisoner No. 2, Balo Rae, a quarter coss distant, and suspended on a *mohwa* tree, near the village of Damnee, where it remained until taken down by the police. The other prisoner was only convicted of accessaryship after the fact, and sentenced accordingly.

Chundun Maria, father of deceased, aged sixty (prosecutor) proves the disappearance on the day, 1st of Srabun, of Fooloo Maria from village of Patrole, also to the recognition of the body as that of his son. On being questioned, he states that he (prosecutor) had a transaction in the purchase of a bullock from prisoner No. 1, that he had agreed to give him six rupees for the bullock, but Chukoo Mundle obtained a bond from him on this account for fifteen rupees, that he had paid him twelve rupees, and on account of the balance three rupees, he had his son taken away, he supposes the prisoner murdered his son on account of his refusing to pay the three rupees.

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The prosecutrix Dookhnee's, mother of deceased, evidence corroborates that of her husband, they both state to their going in search of their son to Hurreela, some days after his being taken away from Patrole, and also that prisoner No. 1 had told them that their son had run away from him (prisoner). The prosecutors recognize the body as that of their son, by the *gumcha* which was used to hang the body on the tree, and the *mallah* or (necklace) found on it.

No. 1, Munnoo Pooghur. Munnoo Pooghur witness, (admitted under Section 3, Regulation X. of 1824,) eye-witness to the fact on oath stated that he saw Fooloo Maria arrive with prisoner No. 1, at Hurreela on the evening of the 1st Srabun, and with them were Gunesh Maria, Googleemian, and Dusseerut Manjee; that the prisoner confined the deceased, Googleemian and Gunesh Maria, after feeding them, in an out-house on the north side of an inner enclosure, but afterwards removed Gunesh Maria and Googleemian to another out-house in an outer enclosure, this was about 2 or 3 o'clock A. M., leaving the deceased by himself. He, witness, was lying in the verandah of the out-house and saw, about 3 o'clock, the prisoner No. 1, through a hole in the door, which was closed, strike the deceased with his shoes and fist, and afterwards seize him by the neck, throw him down and strangle him; he heard the deceased cry out, and then he supposes he died: shortly afterwards Chukoo Mundle called Bhowan Mahoto Gualler, who came, he then desired them, Bhowan Mahoto and witness, to carry the body to a *mohwa* tree near the village of Damnee, the prisoners Nos. 1 and 2, accompanied them. Bhowan and witness were desired to climb the tree and the two prisoners Nos. 1 and 2, passed up the *gumcha*, which was attached to the neck of the corpse, to Bhowan Mahoto and witness, who tied it to a branch of the tree where it was found hanging. The four returned to Chukoo Mundle's house; Chukoo and Balo Rae desired Bhowan and witness not to mention what had occurred; they were kept under surveillance and obliged to remain at the house of Chukoo at night time until released by the police.

No. 2, Benymadhub Dutt.

,, 3, Gopeenath Doss.

,, 4, Anoo Dey.

The three witnesses to the *sooruthal*, prove the finding of the body suspended on the *mohwa* tree, and to the investigation of the police mohurrir.

No. 1, Munnoo Pooghur.

The witnesses to the circumstantial evidence. The 1st is the witness already examined as an eye-witness to the fact, his statement has been briefly given.

No. 8, Bhowan Mahoto. Witness No. 8, Bhowan Mahoto, admitted as Munnoo Pooghur under Section 3, Regulation X. of 1824, as approver, states on the morning of the 2nd of Srabun he was called by the prisoner No. 1. It was very early and

dark, and desired by him to carry a body with witness Munnoo Pooghur to a *mohwa* tree, the two prisoners accompanied them and assisted in raising the body at the foot of the tree and Pooghur and witness tied it to the branch.

No. 9, Googleemian.
 „ 10, Gunesh Maria.

The witnesses Nos. 9 and 10, from their being in company with the deceased on their way to Hurreela, also to their

hearing cries, as of a person being injured at about the time mentioned by the eye-witness to the fact.

No. 11, Mungermian.
 „ 12, Mutee Pundit.
 „ 13, Tajoo Pundit.
 „ 14, Bhunkoo Maria.
 „ 15, Newanee Maria.
 „ 16, Mudoosoodun.
 „ 17, Dusarut Manjee.
 „ 18, Niloo Rajawa.
 „ 19, Suhobut Sheikh.
 „ 3, Gopeenath Doss,
 afd.

Witness No. 11, proves the seeing the parties Chukoo Mundle, Balo Rao, Bhowan Mahoto and Munnoo Pooghur early in the morning of the 2nd Srabun, the two latter carrying away the body, the first named preceding, and the second following the corpse. The rest of the witnesses corroborated the evidence given to the taking the deceased from his own village at

Patrole, to that of Hurreela and the intermediate stoppage at Semria.

The prisoners, both pleaded *not guilty* and called witnesses to their defence.

Prisoner No. 1, in defence stated he was absent from Hurreela at Semria ill, on the night and morning of the 1st and 2nd Srabun, and that the case had been brought at the instigation of a Gutwal, by name of Durbar Singh, who was indebted to him to the amount 2,500, that all the witnesses had been tampered with, by the said Gutwal, and had given false evidence,

* No. 22, Bheekunlal Kait.
 „ 23, Gunesbamlal Kait.
 „ 24, Prag Rae.
 „ 25, Jeebun Manjhee.
 „ 27, Jeetoo Mundle.
 „ 39, Bhugeerut Chowkeedar.
 „ 41, Shek Meerun.
 „ 34, Ahlad Mundle.
 „ 35, Dasoo Mundle.
 „ 28, Motee Mundle.
 „ 26, Nunkoo Manjhee.
 „ 32, Anund Mundle, 1st.
 „ 33, Anund Mundle, 2nd.
 † No. 27, Jeetoo Mundle, afd.
 „ 28, Motee Mundle, afd.
 „ 42, Rubmoo Mundle.
 „ 43, Pershadee Dosandee.
 „ 44, Nehal Foujdar.

‡ Tarenee Churn Rae, Rutun Shaw, Srecauto Singh, Ramsoonder Jogathee.

those for the prosecution as well as those called by himself. He denies all knowledge of the disappearance of Fooloo Maria, but admits that there was a balance due to him by Fooloo Maria's father, on which account he states this case has been brought against him. The witnesses* called by prisoner failed to prove an *alibi*.

Prisoner No. 2, makes no defence but calls witnesses† to his character, none of whom confess to any knowledge of him.

Prisoner No. 1, was assisted by a vakeel of the court, and a Jury,‡ returned a verdict find-

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1854. ing the prisoner No. 1, guilty of the wilful murder of Fooloo Maria, and the prisoner No. 2, guilty of the third charge of aiding and abetting, and acquit him of the 2nd charge.

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Opinion on the Case.

After giving this case my serious consideration, I am of opinion that the murder has been proved by evidence which I see no reason to doubt. It is apparent that Fooloo Maria (deceased) was taken from his own village Patrole to that of Hurreela, that his body was found suspended to a tree in the vicinity of the prisoner's house. I take the evidence of the two witnesses No. 1, to the fact of seeing the murder committed, and the other to the carrying of the body with him, with the greatest suspicion; nevertheless I cannot divest myself of the impression that their stories are naturally correct. The statement of Munnoo Pooghur, that no dispute took place between the deceased and Chukoo previous to blows being given and his being strangled by the latter, I am extremely doubtful about, and on this point I assume that he is incorrect; and further that the prisoner did not premeditatedly commit the murder, but that the deceased was killed in a struggle. I can find no evidence to prove that there was any instrument used which might take away life. The object of the prisoner it would appear was only to obtain payment of a sum of money, for which he held the deceased in custody, and could have no reason whatever to kill him to gain this, but having done so, and being a man of considerable influence, obliged the parties to assist him in disposing of the body. Prisoner No. 1, generally bears a bad character, the circumstance of his being a money-lender to ryots and others on exorbitant terms and, on the occasion of this murder, having on his premises several debtors confined illegally, substantiates the evidence of the witnesses as to his being an oppressive character.

Regarding the prisoner No. 2, I am of opinion he is guilty of both charges Nos. 2 and 3, on clear evidence.

I therefore recommend prisoner No. 1, to be transported for his natural life, and 2nd prisoner, under the circumstance of his being a servant only of the 1st prisoner, to hard labor and chains for the period of fifteen years.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) It is quite established by the evidence, that the deceased, Fooloo Maria, was taken to the house of the prisoner Chukoo Mundle on Friday 15th July, corresponding with 1st Srabun 1260 B. S. On the night of that day, he was placed in one room with witnesses Nos. 9 and 10, Googleemian and Gunesh Maria. These two were, during the night, taken to another part of Chukoo Mundle's house, who had gone into the room and ordered them out, thus remaining alone with deceased, whom he attacked and beat and finally strangled.

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February 1.

 Case of
 CHUKOO
 MUNDLE and
 another.

The removal of the body before day-light and its suspension upon a tree, by the two prisoners and witnesses Nos. 1 and 8, Munnoo Pooghur and Bhowan Mahoto, (admitted by the magistrate as evidence) are also clearly proved, and the body was, when found, recognized to be that of the deceased. The prisoners deny the crimes charged against them. Chukoo Mundle asserts that he was not at Hurreela, but at Semria, on the night of the alleged occurrence, but his witnesses not only do not prove this, but the depositions of some are corroborative of the evidence for the prosecution, that he passed the night of the 15th July at Hurreela. Much of the evidence against him too is that of his own servants, which makes it only the more credible. That offered by Balo Rae in defence tells nothing in his favor. I, therefore, agree with the sessions judge in convicting Chukoo Mundle of the murder of Fooloo Maria and, for the reasons assigned by that officer, sentence him to imprisonment for life in transportation beyond seas.

The evidence does not convict Balo Rae of more than accessaryship after the fact. I therefore sentence him to imprisonment, with labor and irons, for seven years in banishment.

I note for the information of the local authorities, that charge No. 2, should have formed the 3rd charge, and that No. 3, should have formed the 2nd charge, as aiding and abetting in a crime naturally takes precedence, in order of time, of accessaryship *after* the fact.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND MUSST. MUNGLEE,

*versus*Purneah. KHOPREE (No. 3), NUBEE BUX (No. 4), AND HINGUN
(No. 5).

1854. CRIME CHARGED.—Murder.

February 4. Committing Officer.—Mr. G. A. Pepper, officiating magistrate
of Purneah.Case of KHOPREE and others. Tried before Mr. George Loch, officiating sessions judge of
Purneah, on the 4th December, 1853.

Remarks by the officiating sessions judge.—The prisoners are charged with the wilful murder of Hiramun, the husband of the prosecutrix, who states that her husband took advances from the Bhowara factory for skins ; that some one had informed Mr. Egerton in charge of the factory, that her husband was accustomed to sell the skins to other parties. One day in the month of Bhadro, Nubee Bux, a peadah of the establishment, took her husband to the factory under pretence of repairing Mr. Egerton's buggy. In the evening he came again and told her, that her husband had been severely beaten and he did not think he would survive.

The next morning, Mulloo Dhoby and Ram Hujjam, came to her house, and said that her husband was dead, and offered her 10 rupees on the part of the saheb, and told her to say nothing about it. She went however to the thannah and accompanied the police to the factory, where she saw and recognised the body of the deceased, which bore marks of violence. On being questioned by the court, she added that she saw her husband beaten and killed in the factory by two sahebs and their servants, but to this part of her evidence, I attach no credit ; for it is contradictory to what she said before the darogah and magistrate. The darogah apprehended and sent in the parties noted in the margin,* on the 28th August, 1853.

* Khopree Dhoby, Gobind Rae, Balwant Singh, Hingun, Mossaheb Khan and Nubee Bux.

On the night of 7th Bhadro, about 3 o'clock, A. M. Khopree Dhoby seized a thief as he was leaving his house with a bundle of stolen property. Hearing his cries of "thief, thief," the others, who are peadahs, ran to his assistance and found him sitting on and beating the thief with a stick, and they immediately attacked him also and a blow from one of them, said to be Nubee Bux, killed him. The magistrate, afraid that the evidence would not be sufficient for convic-

tion before the sessions court, admitted Gobind Rae, as king's evidence, and after releasing Balwunt Singh and Mosaheb Khan, he took their evidence in the case. 1854.

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others.

On their trial, the prisoner Khopree pleaded guilty to the five charges, viz., being an accomplice in the assault and wounding. The other prisoners pleaded *not guilty*. In his defence Khopree states that about 3 o'clock in the morning, he was roused, as a thief was making his way out through the tatty at the N. W. corner of the house, the fastening of which had been cut. He caught him and fell upon him. Hearing his cries Nubee Bux, Hingun, Gobind Rae, Balwunt Singh and Mosaheb Khan, ran to his assistance from the malkhana, and commenced beating the thief, who was killed by a blow from Nubee Bux; that he did not strike him. To the darogah and magistrate he acknowledged to having beaten the deceased. Hingun makes a similar defence, accusing the others of having beaten the deceased, while he merely looked on, and told them to stop, and the deceased was killed by a blow from Nubee Bux. Before the magistrate he acknowledged to having struck the deceased with a walking stick. Nubee Bux acknowledges to have gone with the others to Khopree Dhoby's house, but denies having beaten the deceased.

* Gobind Rae, Balwunt Singh, Mosaheb Khan. From the evidence of the witnesses noted in the margin,* it appears that hearing the cries of Khopree Dhoby, they with the prisoners, Hingun, and Nubee Bux, ran to the place, found the Dhoby sitting on the thief and beating him with a stick, that the other prisoners also attacked the thief and he was killed by a blow from Nubee Bux.

Hussain Bux and others, witnesses, were also roused by the noise and went to the spot and ascertained from the peons and the Dhoby what had occurred, they said that a thief had been killed by a blow from Nubee Bux.

The law officer considers the charge of wilful murder proved against all three prisoners, and considers them liable to *akoo-but*. They are undoubtedly guilty of using most unnecessary violence to the thief, (from the effects of which he died immediately) who was secured and offered no resistance; but as there appears to have been no ill-will nor any intention to kill the man, whom, in the excitement of the moment, they beat without considering what they were doing or what consequences might follow their ill-treatment, I think that imprisonment for two years, with labor and irons, would be a sufficient punishment for the offence.

I consider the magistrate has erroneously released the parties, noted in the margin.* Before the darogah and before him they

* Gobind Rae, Balwunt Singh and Mosaheb Khan. admitted being on the spot when the thief was killed, one accusing the other

1854. of having helped to beat the deceased, and I have no doubt that they all did beat him. There does not appear to me to have been any necessity for admitting Gobind Rae as king's evidence, for the offence could have been proven against the whole of the parties apprehended, by their own admissions and the evidence of Hussain Bux, Brijulal and others, servants of the factory, who saw them round the body armed with sticks immediately after the man had been killed, and to whom they acknowledged that a thief had been killed.

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Remarks by the Nizamut Adawlut.—(Present : Mr. B. J. Colvin). The facts are all acknowledged by the prisoners, who have appeared by counsel (Hurokalee Ghose) and urged that the homicide was justifiable, as the deceased was a thief captured in the act of flight and required to be secured at all hazards. It is proved, however, that he was sufficiently in the power of his captors to prevent his escape, and he was unnecessarily maltreated; his death was the consequence. The sentence proposed by the sessions judge, which with reference to all the circumstances of the case is a light one, is hereby passed upon the prisoners.

PRESENT :

A. DICK, Esq., *Judge.*

Rajshahye.

B. J. COLVIN, Esq., *Officiating Judge.*

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GOVERNMENT,

versus

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Case of
ISHAN CHUN-
DER RAE and
others.

ISHAN CHUNDER RAE (No. 19), BRINDABUN BEHAREE ALIAS BEENUD MOZOOMDAR (No. 20), AND BUDDER SIRCAR (No. 21).

The prisoner was acquitted on the merits of the case. The legality of the commitment with reference to above crime.

CRIME CHARGED.—Nos. 19 and 20, 1st count, having uttered a document (*ikrar*) knowing the same to have been forged; 2nd count, being accessories before and after the fact; 3rd count, privy to the above crime; 4th count, fraud. No. 21, 1st count, being an accomplice in the above crime; 2nd count, being an accessory before and after the fact; 3rd count, privy to the above crime.

Act I. 1848,
discussed.

Committing Officer.—Baboo Gopaul Loll Mitter deputy magistrate of Nattore.

Tried before Mr. G. C. Cheap sessions judge of Rajshahye, on the 21st December, 1853.

Remarks by the sessions judge.—The reason for this reference is, that I dissent from the futwa of acquittal given by the law officer as regards the prisoner No. 19.

The Government was the prosecutor and appeared through their vakeel.

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The prisoners pleaded *not guilty*, but No. 19, when shown the deeds marked A and B, admitted he had filed them in the court of the deputy magistrate of Nattore.

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Witness No. 3. The serishtadar of the deputy magistrate's office deposed to No. 19 filing the two deeds, both of which were dated the 2nd Kartick 1259 B. S., but as the endorsement on the paper showed the stamps were sold on the 23d of Kartick, they could not, as set forth, have been executed on the 2nd of Kartick. The prisoner said he had received them from his client the Khondkar of Bhugguh. The other two prisoners were not present when the deeds were given in by No. 19.

Witness No. 5, sold the two stamps on which the deeds were engrossed, on the 23d Kartick, to a person calling himself Anund Sheikh, but could not recognize the witness of that name when brought into court.

Witness No. 6, bought the two stamps of the last witness, and paid one rupee eight annas each for them, and gave them to Rajkissen Byragee, whose servant he was. They were bought to give *ikrars* to the Khondkar. (I carefully watched this witness and observed, that before answering any question put to him he looked at the mokhtars standing behind the prisoners.)

Witness No. 1, denied ever giving or signing the deeds produced, but admitted he gave a bond and an *ikrar*, when under duress or in the custody of peadahs, and he also signed a sheet of blank stamp paper and gave it. This was in the month of Falgoon. The bond was for Rs. 99-12, and the *ikrar* for Rs. 79-9, Anund Sheikh (witness No. 6.) was not his servant, nor did he know him.

The Khondkar was reported absent, and the Government vakeel declined examining the other witnesses named in the calendar for the prosecution.

There being no evidence against Nos. 20 and 21, the law officer was called upon for a futwa as regarded them, in order that the other prisoner, if he wished it, might examine them to his defence.

This prisoner's defence was a written one, containing aspersions against the deputy magistrate's peishkar, and the deputy magistrate himself, for not summoning witnesses he had named in a petition given into the deputy magistrate as witnesses for his defence at the sessions.

Witnesses Nos. 13, and 14. These witnesses deposed that the prisoner received the *ikrars* in cutcherry, from the prisoner No. 21 (acquitted) and filed them without looking at them.

Budder Sircar. This witness (who had been released) deposed to receiving some papers from Beenud Mozoomdar, to deliver to No. 19, which he did, but could not speak to their nature,

1854. or that the deeds on the table were the same he delivered to him.

February 4. Brindabun Beharee alias Beenud Mozoomdar. This witness (who had also been released) confirmed the statement of the last, adding he had received the deeds and papers from Bhugga, from Brojonath Boornick and when he sent them to No. 19, he (witness) was at the Bhetooah cutcherry, 25 or 30 *russees* from the deputy magistrate's court house; he sent them the same day just as he had received them.

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The petition given to the deputy magistrate was then read and as three of the persons therein named were present, they were examined.

Witness No. 3. The serishtadar of the deputy magistrate's court deposed, that witness No. 1 said he had given *some* deeds, but he could not say if *these* were the deeds. Does not recollect to whom he said he had given them.

Witness No. 10, could depose to nothing.

Witness No. 13, heard witness No. 1, say, he had given certain deeds, he did not say what deeds, nor could he (the witness) say what deeds he referred to.

The law officer was then called upon for his *futwa*, and brought in one of acquittal on two grounds, *first* because it was not proved that the *ikrars* were forgeries, there being only one witness (meaning Rajkishen), and several in the *foujdary* had proved he had given them (these were the witnesses for the prosecution that the Government *vakeel* had declined examining) and there might have been a mistake on inserting the date, *or* the wrong one had wilfully been entered; *second*, no guilty knowledge on the part of the prisoner was established as he filed the deeds directly he received them.

Now I must dissent from this finding, *or futwa*, as inconclusive, opposed to fact, and the evidence adduced in the sessions court: and I am compelled to add much too favorable a view taken of the *mokhtar's* case, from his being the *mokhtar* of the law officer's friend and I believe connection, the Khondkar of Bhuggah.

In the first place if a person's signature is forged, his evidence is admissible to prove the forgery; and the date of the sale of the stamp papers is quite convincing proof, that the deeds, purporting to have been signed and executed by him on the 2nd of Kartick, 1259, B. S., could not have been signed or executed on that date; as the stamp had not then been sold, and any court having to decide on such deeds would not be far wrong in declaring them both forgeries and *palpable* ones.

From the other *nuthee*, submitted with the proceedings, the court will perceive a complaint was lodged against Rajkissen Byragee on the 16th April, by one Rohmut Komaroo on the part of the Khondkar for embezzlement, and not giving his ac-

counts. Rajkissen in his answer to the complaint, stated he had been employed as *tahsildar* of Betwa, but had been dismissed in the month of Assin last, when the prisoner, No. 19, was appointed in his place. That he was re-appointed in Aghun, but having given a *jote* to a person by name Koodrut Cowsomer, he was sent for by the Khondkar and told he must present a petition denying he had given him a *pottah*. On refusing to do so, he was put in charge of peadahs, and made to give a bond for Rs. 99-12, and an *ikrar* for Rs. 79-3, and to affix his signature to a blank sheet of paper. This was in the preceding month of Phagoon (or some time in March or April last).

This answer, it will be seen, was given on the 10th of June, and on the 26th of July, more than six weeks after, the prisoner, who holds a general *mokhtarnamah* from the Khondkar, under this *mokhtarnamah*, it may be presumed, and without being called upon to give any proof by the deputy magistrate in support of Rohmut Komaroo's complaint, filed the two *ikrars*. The amounts exactly correspond with the amounts stated in Rajkissen's answer, and as with the papers there was a list, in which the dates of both deeds were mentioned, and his signature attached to the list, this of itself is a flat contradiction to his statement, and that of witnesses Nos. 13 and 14, that he never examined the deeds before he presented them to the deputy magistrate in his court and to admit such a plea from a *mokhtar* of the court, who voluntarily produces proof in another man's case, would be opening a door to great fraud and chicanery.

I therefore leave it for the Court to decide, (as there can be any doubt about both deeds being forgeries) with reference to the case of Bukhtowar, (cited by the deputy magistrate) whether the filing such forged deeds in a court of justice, by a *mokhtar* of the court, who was evidently interested in establishing their contents, does not afford sufficient presumption that he filed them, or uttered them *knowing them to be forged*.

In Bukhtowar's case, the chief judge remarked. "The exhibition of a forged deed is proof that a real deed of the kind had no existence, and of the nonentity thereof he could not be ignorant, and consequently he must have been aware that he was exhibiting a document in proof of a transaction which never took place."

Now in this case there were documents given by Rajkissen, and no doubt his answer was the clue to the forged deeds being prepared; and whether the prisoner knew, or did not know who perpetrated the forgeries, there can be no doubt he voluntarily came forward to file them in the deputy magistrate's court, and what in my opinion is convincing proof they are forgeries is, that the Khondkar neither in the deputy magistrate's court or in this, has appeared to refute the statement made by Rajkissen,

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1854. first in the deputy magistrate's court as a defendant, and in this
 February 4. as a witness, which he so easily could have done if he received
 the *ikrars* from that individual, on account of defalcations on
 his part.
 Case of For these reasons and holding it proved there has been a
 ISHAN CHUN- gross attempt to deceive a court of justice by a mokhtar attach-
 DER RAE and ed to the court, by the production of forged deeds, I beg to re-
 others. commend that the futwa of acquittal be set aside, and the
 prisoner No. 19, convicted on the first count, and sentenced to
 two years' imprisonment with labor commutable on the payment
 of a fine of one hundred rupees.

This prisoner has been again bailed, pending the court's final
 orders, and the other two released agreeably to the separate
 futwa given in relation to them.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick
 and B. J. Colvin.)

Mr. A. Dick.—I see nothing improper or illegal in the pro-
 ceedings of the magistrate in this case. The case was pending
 in his court, in which there appeared to him sufficient grounds
 for preferring the charges of forgery and uttering forged docu-
 ments against the prisoner, now before us, and others; and he
 accordingly directed the charges to be preferred on the part of
 Government. This is the course especially enjoined by law,
 Section 11, Act I. 1848, for all courts civil and criminal, (except the
 court of the magistrate,) with the necessary addition, that they
 are to send the parties and witnesses to the magistrate. There is
 nothing in the law which *prohibits* the magistrate himself from
 originating charges in cases pending before him, when he sees
 sufficient grounds for so proceeding, and I can see no ground
 why he should be so prohibited.

I have deemed it necessary to premise so much on the legality
 of the commitment, in consequence of the question being mooted
 by my colleague Mr. Colvin, sitting with me.

I now proceed to the merits of the case. I dissent, totally,
 both from the finding of the sessions judge, and the reasoning
 on which it is founded.

The proof of the deeds in question being forgeries, are 1st, the
 sole testimony of the giver of the deeds, who, though he denies
 them, admits that the signatures on them are like his signatures,
 and that he did give, under duress, two deeds for exactly the
 same sums, a few months subsequent to their dates; 2nd, the
 dates of the deeds being 21 days prior to the sale of the stamp
 papers on which they are written. Had the witnesses to those
 deeds testified to their having been written on the prior date,
 2nd Kartick, and had that date been of importance, the forgery
 of the deeds would have been fully proved. The witnesses, how-
 ever, to the deeds distinctly testified to their having been written
 on the 24th Kartick, that is, one day subsequent to the sale of

the stamp papers; and this last date answers every purpose for which the deeds were filed, as well as the prior dates. Hence there is no cause for antidating; and the plea for prisoner, that the figure 4 must have been inadvertently left out by the writer of the deeds, becomes plausible and credible; especially as only the figure 2 appears on both deeds, with a considerable space before the word Kartick, and the date "second" is not *written*, only the figure 2. The presumption of forgery from the dates being thus removed, the evidence for the genuineness of the deeds is better than that against it; for the subscribing witnesses to the deeds have testified their truth; while the denial of their having been given, is unsupported by any other testimony or proof, save the deposition of the giver himself.

I therefore concur with the mooftee in acquitting the prisoner No. 19, Ishan Chunder Rae, and would direct his immediate release.

The Court observe, that the sessions judge was not justified in not requiring the attendance of the subscribing witnesses to the deeds at the trial, and examining them, merely, as recorded, because the three witnesses for the defence, who had been heard, had testified nothing in favor of the prisoners. The subscribing witnesses to the deeds had testified to their truth in the foudary.

Mr. B. J. Colvin.—The two deeds, which form the ground of this prosecution, were filed in another case, pending in the deputy magistrate's court. They were not impugned by the opposite party, nor was any charge preferred by him. The deputy magistrate, considering the deeds to be forged, originated the present proceedings, with reference, he states, in his roobakaree of 26th July, 1853, to paragraph 3 of circular order, 13th March, 1846, and Acts 1 and 22, of 1848.

The circular order referred to was issued to prescribe rules for the conduct of charges of forgery, in the absence of express legislation on the subject, but Act 1, of 1848, having been passed to remedy this defect, the circular order is virtually superseded and cannot be cited as an authority, where its rules are opposed to the subsequent law. Now by Act 1, of 1848, *in any case* pending before a criminal court, a charge like that in the present case, must be preferred by a party to it. The exception, made in Section 2 of that Act, of the court of the magistrate or of any officer exercising the committing powers of a magistrate, refers to the course of procedure for dealing with the charges, when formally made by a party according to the law, because the accused being before a committing officer at the time of preferring the charge before the magistrate, no steps for his transfer to another officer for the investigation of the charge, preliminary to commitment, had to be indicated. Another reason for the exception is, that Act 1 of 1848 was not intended to exclude

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Case of
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1854. from the cognizance of magisterial authorities criminal prosecutions for forgery which, to use the words of paragraph 4 of the above circular order, may be instituted irrespectively of proceedings in any civil or criminal court.

February 4. Act 22, of 1848 cited by the deputy magistrate, refers to the supreme courts, and its mention by him was superfluous.

Case of ISHAN CHUN-
DER ROY and
others.

For the foregoing reasons, I hold that the commitment was bad in law, and the accused is entitled accordingly to his release.

Having gone into the merits of the case with Mr. Dick, who does not assent to the above view of the law, I agree with him that the prisoner, on them also, is entitled to his release, as it is not proved that he issued the deeds in question with any guilty knowledge.

PRESENT :

A. DICK, Esq., *Judge*,

AND

B. J. COLVIN, Esq., *Officiating Judge*.

GOVERNMENT,

versus

SHURUBDEE.

Rungpore.

1854.

February 4.

Case of
SHURUBDEE.

CRIME CHARGED.—Severely wounding of Gazee Nusho with intent to murder him, or to do him some grievous bodily injury. Committing Officer.—Mr. R. H. Russell, joint-magistrate of Bograh.

Tried before Mr. William Bell, sessions judge of Rungpore, on the 13th January, 1854.

A sessions judge finding in concurrence with the law officer the homicide charged to be justifiable, should release the prisoner forthwith, and not refer his case for a free pardon.

Remarks by the sessions judge.—The case is simply this; the prisoner Shurubdee was, on the night of the 1st of November, sleeping with his wife, when Gazee came in and commenced handling the woman, the husband awoke and a struggle ensued in which the prisoner wounded Gazee severely; the doctor deposes that he found nine incised wounds on his person, four of these were severe but none in my opinion of a dangerous nature. The severe wounds were one on the lower jaw, one on the head, one under the left arm and one on the back. Gazee escaped and ran away home, and the next day his father gave intimation at the thannah.

Gazee, No. 1. The first witness is Gazee, the wounded man, who states that the woman invited him to visit her and that he did so, when the prisoner and his brother rushed out upon him and inflicted the wounds.

Khoodee Aurut, No. 2. The second is Khoodee Aurut, who declares she found a man handling her and discovering it was not her husband, roused him and the row ensued, and then she recognized Gazee.

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Mangun No. 3. Says, he was roused at night by the noise, and saw Gazee running home and on going to the prisoner's found him wounded, who said Gazee had done it and told him his story, he then went to Gazee's and saw his wounds and heard his account of the affair.

Shere Mahomed father of Gazee, No. 4. Heard the noise and saw his son come home at night wounded, who told him that the prisoner and his brother had wounded him.

Dost Mahomed, No. 5, was awoke by the noise, and the prisoner told him his story.

Khoroo, Pramanick No. 6—Heard the prisoner calling out that Gazee had wounded, and heard his version afterwards. Shere Mahomed called him to see his son and he found Gazee wounded and heard his story.

Mandee Pramanick No. 7, Jukee Nusho No. 8. Witnesses to the Mofussil confession of the prisoner, in which he allows that Gazee came to his house and that there was a struggle and blows passed between them.

Deposition of the apothecary in charge of the Bograh jail, Mr. J. Taylor, No. 10, deposes to the severe wounds.

Gopeenauth Sircar, No. 11, Shamsounder Sircar No. 12. Witnesses to the confession before the magistrate, in which the prisoner states that they had a struggle, in which he struck him two blows with a *dao*.

Defence of the prisoner. Before the court he denies, and declares he was told what to say at the thannah.

Futwa of the law officer and recommendation of the sessions judge. The law officer orally returns a verdict of not proven, and in his futwa he records that the struggle ensued in consequence of Gazee attempting to dishonor the woman, and that he is not liable to punishment. I consider the case proven, the discrepancies between the depositions of Gazee are not of much consequence, under all the circumstances, and I have no doubt of the prisoner having inflicted the wounds. I would therefore record a verdict of guilty but, considering all the circumstances of the case, would recommend him for a free pardon.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. Dick, and Mr. B. J. Colvin). We observe that the sessions judge finds the facts proven against the prisoner, and has sent up the case for the court's orders, as the law officer, who also finds them proven, had declared him not liable to punishment. It is apparent, however, that the sessions judge considered the wounding justifiable, which is a virtual agreement with the law officer, and in such case he should have released the accused, according to the concluding words of clause 1, section 4, Regulation IX. 1807, which are as applicable to sessions judges as to magistrates.

We acquit the prisoner and direct his release.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND ESOODDEEN,

versus

Backergunge. ZAINOOLLAH (No. 2,) CHOTOO KAZEE (No. 3.)
DHULLOO MEAN (No. 4,) KOOTOOBODEEN (No. 5.)

1854. CRIME CHARGED.—1st count, wilful murder of Alladee; 2nd
count, riot attended with the culpable homicide of Alladee and
February 6. the wounding of Sullim.

Case of Committing Officer.—Mr. W. M. Beaufort, magistrate of
ZAINOOLLAH Backergunge.
and others.

Tried before Mr. C. Steer, sessions judge of Backergunge, on
the 5th January, 1854.

Transportation except in the case of life-convicts, illegal. Three prisoners sentenced to imprisonment for life in transportation for riot with murder. One present, although not taking an active part, sentenced to imprisonment for five years.

Remarks by the sessions judge.—The prosecutor is a partner with one Ashruff, in a certain field. The crop being ripe, the parties went to cut it. Ashruff's party arriving first, set to work in absence of the other, which led to words and an altercation between Alladee, the plaintiff's deceased brother, and another Ashruff, a hired laborer of Ashruff, who is the plaintiff's partner. This second Ashruff lodged a complaint, on account of this quarrel, before the prisoner, Dhulloo Mean, who thereupon sent a peadah to summons the offenders. The prosecutor being no *ryut* of his, or in any way amenable to him, refused to attend, and the consequence of this contumacy was a visit, a few days afterwards, at break of day from Dhulloo Mean, and the other prisoners, in force about 100 men, all armed with spears and other weapons. Dhulloo Mean and a brother of his, by name Wahed Khondkar, headed the gang and gave the orders to plunder the house and seize the inmates, and the other prisoners immediately proceeded to execute it. Resistance was made by the prosecutor and his brothers, when Chotoo Kazee twice wounded Alladee by thrusts with spear, each time inflicting a wound upon his thigh, he then threw the spear and Alladee picking it up, ran at Chotoo and wounded him. Satisfied with this revenge, he was running off, when he stumbled over a stump of a tree close to his house, and while on the ground, Zainollah came up and speared him and he almost immediately died.

Such was the tenor of the whole of the evidence taken before the magistrate, I did not call up all the witnesses for examination, but such as I selected for that purpose fully corroborated the facts of the case as above set forth.

It was not, however, said at the thannah that Chotoo Kazee gave the deceased two wounds, and that Zainollah gave him

the wound, which killed him ; in all other respects, and in attributing to the three first prisoners, Zainoollah, Chotoo Kazee and Dhulloo Mean, a significant part in the riot, the evidence from first to last, has been uniform and consistent with the epitome of the case, as above given.

The medical officer is of opinion, that death was caused from loss of blood by the opening of the femoral artery ; he also states that he found that the top of the thigh bone was fractured.

The defence of Dhulloo Mean is, that he has been substituted for another person of the same name in his family ; that he himself had nothing to do with the riot, and that he was in Burrisaul, on the day of the occurrence.

Chotoo Kazee pleads that he fell from a bamboo bridge and so got the wound, which was fresh at the time of his apprehension, he further states that he was absent on the day of the occurrence.

The other two prisoners also plead *alibi*.

The witnesses called up on behalf of Dhulloo say, that they saw him in the house of a mooktiar in Burrisaul, on the 20th August, 1853, but the accuracy of the recollection by these parties, of the exact date of a casual meeting is not a fact to be relied upon, opposed as it is to the ocular proof of his presence in the riot, as deposed to by numerous witnesses.

Of Chotoo Kazee's witnesses, one knows nothing as to the manner or time of his receiving the injury. The other deposes that one day in the early part of Bhadoon 1260, he went to the prisoner's house and seeing him not in his usual health, was told by him that he had fallen from a bamboo bridge and hurt himself. The witness's statement may be quite true, but the prisoner was himself the informant ; it in no way assists to exculpate him.

The witnesses of Zainoollah and Kootobodeen say that, to the best of their belief and recollection, they saw the prisoners in the places named by them respectively on the day of the riot.

The law officer finds the prisoners, Nos. 2, 3 and 5, guilty of riot attended with the culpable homicide of Alladee and the wounding of Sullim, and No. 4, of being the principal and instigator of the above crime, and declares them liable to *tazeer*.

Killed as the deceased was in a premeditated and unjustifiable attack upon his house by a band of armed men, the parties concerned in it are clearly guilty, in my opinion, of being accomplices in the wilful murder of Alladee. As guilty in the highest degree, I would recommend that Dhulloo Mean be transported for life ; that Zainoollah and Chotoo Kazee, as being active agents in the riot, be transported for fourteen years ; and that Kootobodeen, who though of the attacking party, appears to have been but a spectator, be sentenced to five years' imprisonment in the zillah jail with labor and irons.

1854.

February 6.

Case of
ZAINOOLLAH
and others.

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Case of
ZAINOOLLAH
and others.

Outrageous acts of this kind, on the slightest, and sometimes without the least provocation, are, as the court are aware, of frequent occurrence in this district, and hardly a case occurs in which the party attacking is not provided with weapons to commit bloodshed, if need be, in carrying out his own object. Though murder is little expected at the time, murder does commonly happen, and it requires the severest examples to reach the people of this district to refrain from acts of lawless violence, to which propensity many lives are yearly sacrificed.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I concur with the sessions judge in the conviction of the four prisoners. The defence of Dhulloo Mean, No. 4, before that officer is different from his defence in the magistrate's court, where he did not state that he had been accused instead of another person of the same name. The evidence to substantiate the defences of the other prisoners is quite insufficient and inconclusive in their behalf.

On the other hand, the evidence for the prosecution is clear and consistent that Dhulloo Mean instigated the attack, the result of which was the death of Alladee and the wounding of Sullim, while the wounds, it is proved, were dealt by Chotoo Kazee and Zainoollah. The former, besides having wounded Sullim, is proved to have speared the deceased on the left thigh, thereby dividing the femoral artery, which was the immediate cause of his death. The wound on his right thigh, which was also described by the medical officer as of a very dangerous character, was given by Zainoollah. I consider that no difference should be made in the punishment of the prisoners Nos. 2, 3, and 4, they are therefore sentenced to imprisonment with labor and irons in transportation for life.

Transportation for fourteen years proposed by the sessions judge for prisoners Nos. 2 and 3, is contrary to Clause 2, Section 8, Regulation 53, 1803, by which life-convicts can alone be transported.

The sentence proposed by the sessions judge for prisoner No. 5, is confirmed.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT,

versus

DEENONATH GHOSE.

Nuddea.

1854.

February 8.

Case of
DEENONATH
GHOSE.

CRIME CHARGED.—1st count, dacoity on the boat of the plaintiff, Ramprotab Singh, Churundar's master, in which property to the value of Rs. 562-12-9, was plundered; 2nd count, knowingly receiving and having in his possession plundered property acquired by the above dacoity.

CRIME ESTABLISHED.—Knowingly receiving and keeping in his possession plundered property obtained by river dacoity.

Committing Officer.—Mr. Geo. Hewett, deputy magistrate at Cutwa.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 2nd December, 1853.

Remarks by the officer in charge of the sessions judge's office.—The late sessions judge, Mr. J. C. Brown, did not record his remark in the case when he sentenced the prisoner, it was a habit with him to write the remarks after the receipt of the magistrate's statements, or at the time of the preparation of his own statements.

Sentence passed by the lower court.—Seven years' imprisonment and two years in lieu of corporal punishment, being in aggregate to nine years, with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The sessions judge having recorded no remarks on this trial, I went over the record and found this prisoner had been convicted on the evidence of the witnesses, who were cited by other prisoners in their defence, when charged with possession of the stolen property.

These witnesses state that the prisoner and others, sold the property to the persons with whom it was found. Beyond this there is nothing against the party appealing, and I consider it insufficient to support the conviction, I therefore acquit the prisoner.

Prisoner convicted on the evidence of witnesses cited by other prisoners in their defence, when charged with possession of stolen property. The Court held this evidence to be insufficient, and acquitted the prisoner.

PRESENT :

A. DICK, Esq., *Judge*,B. J. COLVIN, Esq., *Officiating Judge*.

Behar.

GOVERNMENT,

versus

1854.

RAMBUX LALL, KAETH.

February 10.

Case of
RAMBUX LALL,
KAETH.

A false charge on oath, without any one being at the time on trial or put on trial in consequence of it, cannot be treated as perjury.

CRIME CHARGED.—1st count, preferring a false and malicious complaint to implicate innocent persons; 2nd count, perjury, in having on the 16th November 1853, deposed under a solemn declaration taken instead of an oath before the officiating magistrate of Behar, that the umla of mouza Qutloopore, Ismilepore Role (a hereditary *mokurruree* tenure belonging to my master) made an application to my master, in which he stated that about 250 persons were deputed on the part of Moulvee Ally Kurreem, dewan of Baboo Mode Narain Singh, (amongst whom, were Gopaul Rae, inhabitant of Bhareea, and Hud Ally jemadar, sent by the said Moulvee) for the purpose of plundering thousand maunds of grain stored in my master's cutcherry, being the produce for the past and present years, as well as the cash which might be in the same cutcherry. They are all congregated for the purpose of plundering. If you do not take notice of this, and go yourself to-day, there will be blood-shed. And again in having, on the 19th November 1853, deposed under a solemn declaration taken instead of an oath before the officiating magistrate of Behar, that, on the 1st of Aughun, on Wednesday, I presented a petition, praying that measures might be adopted for the prevention of a riot and keeping of peace, on which you were pleased to pass an order to issue a purwanah to the jemadar of thannah Gya. Afterwards I came to cutcherry, when the umla came back after the report had been heard. The purwannah navees sent the purwannah to the thannah by Abed Ally chuprassee, who is a man of Moulvee Ally Kurreem, and who lodges in the house of Moulvee Ally Kurreem. Abed Ally chuprassee, after having delivered the purwannah to the thannah, gave information to Moulvee Ally Kurreem, dewan of Baboo Mode Narain Singh, at noon, that Rambux Lall had filed a petition in the kotee upon which a purwannah had been issued to the jemadar. Upon this, Moulvee Ally Kurreem sent a *sawar* from this place, who dispersed the assembly (goharian) and although they had been dispersed, yet I pointed out fifteen persons, whom the jemadar seized and brought to the thannah. But it appears that the jemadar released them. Moulvee Ally Kurreem was in this city on the day, on which date, I filed my petition in the *kotee*. On

Thursday, Moulvee Ally Kurreem went to Teckary and on his being questioned as to why he did accompany the jemadar to thannah, replied, that the jemadar did not come to the thannah on that day. I went to the jemadar to his lodging, who told me to go for the present and wash my hand and feet, I will *chullaun* them to-morrow morning. It was evening, when I arrived at the jemadar's house, and when I again went in the morning, the jemadar said you have pointed out five or seven persons, you may go, I shall, or shall not *chullaun* them. Such depositions being false and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer.—Mr. A. G. Wilson, officiating magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 10th January 1854.

Remarks by the sessions judge.—The prisoner, a servant to one Gunputlall, styling himself hereditary mokurruree leaseholder of mouzah Qutloopore and Ismilepore, complained to the officiating magistrate, both by petition and evidence on oath, under date 16th November last, that Moulvee Ally Kurreem, the proprietor's dewan, having collected rioters for the purpose of dispossessing his master of these villages, he prayed for their timely apprehension on the spot either through the magistrate himself or his nazir. But orders to such effect issued on the police No. 4, November 16th. Then followed further complaint by the prisoner, on 18th idem, and evidence on oath of 19th following, No. 6, to the purport "that his master had previously complained of the partial conduct of the police, through whom it was in vain to expect redress." Abed Ally a chuprassee of the magistrate's court, a creature of Moulvee Ally Kurreem's had been the bearer of the order to the police after having first put the dewan on his guard, who had dispatched a horseman to disperse the rioters. Still accompanying the jemadar in execution of the orders of the 16th previous, he had made over to him five or six or fifteen rioters as variously enumerated by the prisoner himself, when first questioned by the officiating magistrate. The jemadar's return, 18th November, No. 5, reported that he had found no rioters.

The officiating magistrate directed enquiry into the matter, when information was obtained from the thannah mohurrir (witness 4) on the 22nd November, that the purwanah had been delivered at the thanna on the 16th idem by a chuprassee then unknown, but who on further enquiry turned out to be a strange peon, one Ibrahim Ally (witness 9) who had accompanied the officiating magistrate from Nowada. The officiating magistrate, on the strength of the investigation which followed, committed the prisoner for having falsely deposed before him, on 16th and 19th of November last, as shewn in the indictment, which, ac-

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1854. No. 1, Kubbeerooddeen Ahmed.
 February 10. No. 2, Syed Peerbux.
 Case of No. 3, Bhuhunlall.
 RAMBUXLALL, No. 4, Kissanlall.
 KAETH. No. 9, Ibrahim Ally.
 No. 10, Tazally.
 No. 24, Mahomed Ally.
 No. 5, Bishoon Subye.
 No. 6, Mudho Singh.
 No. 7, Rughobur Singh.
 No. 8, Ujodhya Chowdhury.

cording to the calendar, is supported by the evidences of the writers of the two depositions, witnesses, 1, 2 and 3. Those of the thannah mohurri, two peons and purwannah nuvees witnesses, 4, 9, 10 and 24, relative to the delivery of the purwannah at the thannah by witness 9 instead of Abed Ally chuprassee, and of the jemadar and three burkundazes, witnesses, 5, 6, 7 and 8, as regarded no rioters having been found on the spot.

The prisoner's defence is the repetition of his two complaints, accompanied by stronger allegations of the partial conduct of the police and umlah of the magistrate's court, in collusion with Moulvee Ally Kurreem. He called several witnesses, exclusive of those to character, whose testimony, however, went no further than that they had witnessed the prisoner, making over to the police jemadar some fifteen or sixteen strange persons said to have been rioters.

The futwa of the law officer, acquitting the prisoner in other respects, considers the falsehood of the prisoner's deposition as regarded Abed Ally chaprassee, and the prisoner's having caused the apprehension of fifteen unknown rioters, as fully established, and convicting him of perjury, under his deposition of 19th November last, declares him liable to punishment by *tazeer*.

This to my mind is an incomplete view of the case in all its material bearings, I find no such conclusive proof either direct or inferential, which would warrant the prisoner's conviction for having wilfully and designedly perjured himself with the evil intent to injure others, but on the contrary rather the presumption that what he deposed to, was fairly stated in protection of his master's interest. After all, the utmost of his complaints extended to an anticipated breach of the peace, and unfair dealing regarding it by the magistrate's subordinates in collusion with his master's adversary. Both points are not improbable. A dispute at the time did exist between the prisoner's and Dewan Ally Kurreem's masters relative to the possession of these villages, which was tried by the officiating magistrate, under Act 4, 1840, on 26th November last, and decided by him in favor of the former, but reversed by me in appeal, on the 3d December, 1853, it being undeniably shewn that the prisoner's master possessed no hereditary mokurruree title as claimed by him, or indeed any mokurruree title of any kind whatsoever in the property. The defence set up on this trial was that the villages had lapsed to the proprietor's legal management, owing to incomplete negotiations on the prisoner's master's part, which the proofs filed by the latter plainly confirmed. Under the circumstances of the case and according to the record, however,

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the prisoner's master's dispossession, after some years' possession, stood acknowledged, and at the time, therefore, the prisoner might have supposed that he had just grounds to complain of breach of the peace. Although proof is wanting that Abed Ally chuprassee was the bearer of the purwannah to the police, or forewarned Moulvee Ally Kurreem of its contents, so as to cause the timely dispersion of the rioters, yet it has been amply elicited by the prisoner's cross-examination of the witnesses for the prosecution, that Abed Ally is a chaprassee in constant attendance in the magistrate's court, usually the bearer of orders to the police and why not so in the present instance is not very apparent, and that he is a creature of Moulvee Ally Kurreem, who was formerly sherishtadar of the magistrate's court. It has also been elicited from them, that on the issue of the order on 16th, the prisoner accompanying the jemadar to the spot, and to all outward appearances in good faith taking him about from place to place in search of the rioters, the making over of whom only as unknown persons, is not an improbability in itself, until his complaint, on the 19th, could not have had any personal knowledge as to how the order of the 16th had reached the police, and it was natural enough for him to have concluded that it had done so in the usual manner through Abed Ally chuprassee. But the real fact is, that the order was communicated to the police during the prisoner's absence, in the most open unguarded manner passing through so many hands, it could have been no secret, and might have been communicated to the adverse party in many other ways than that complained of by the prisoner, so that the main facts, either as to an existing cause for riot, or the dispersion of the rioters through information clandestinely obtained, the gravamen of the indictment, are not altogether so improbable as to make the prisoner's complaints regarding them, false, however much he may possibly having exaggerated them. The prisoner's master had also previously complained of the partial conduct of the police, and of which some notice had been taken by the officiating magistrate. The evidence of the witnesses, Nos. 4 to 10, as composed of police officers, cannot be considered as disinterested, more especially as having originated subsequent to the prisoner's and his master's repeated complaints against them. There is nothing essential in it also from first to last which would have rendered it difficult of conviction. I view it with distrust and giving the prisoner the benefit of so many doubts, I would acquit him for want of proof of his guilt.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) On the 1st count, the Court observe, no commitment was necessary. The officiating magistrate should have disposed of it under Section 5, Regulation VII. 1811. However on that count, as also regarding the alleged perjury on the 16th November, both the mooftee and sessions judge concur in

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1854. acquitting. No orders are therefore necessary respecting them.
 February 10. As regards the alleged perjury of the 19th November, the
 Case of mooftee convicts and the sessions judge acquits.
RAMBUXLALL, The Court however again observe, that as the allegation in
KARTH. question was made before the officiating magistrate in a charge
 preferred in his court, if he deemed it on investigation malicious,
 vexatious, or unfounded, he was empowered to punish under
 Section 5, Regulation VII. 1811. To constitute the crime of
 perjury requires, that it be on a point material to the issue of a
 case pending before the court. Now neither the purwannah-
 nuvees, nor the peadah, Abed Ally, nor dewan Moulvee Ally
 Kurreem who could have been effected by it, were on their trial
 at the time the allegation on oath was made, or subsequently
 put on it, in consequence thereof.

The Court acquit the prisoner of the crime charged, and order
 his release.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

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 Pergunnahs.

DOORGACHURN CHUCKERBUTTEE AND GOVERN-
 MENT,
versus

1854.

JYOGOPAL BANERJEA.

February 10. CRIME CHARGED.—1st count, embezzling the undermentio-
 Case of ned Bank of Bengal Notes, amounting to Co.'s Rs. 135, and Co.'s
 JYOGOPAL Rs. 16-8 in cash, total Co.'s Rs. 151-8, the property of the plain-
BANERJEA. tiff, Doorgachurn Chuckerbuttee, darogah of thannah Nyehattee,
 on the 10th February, 1853.

Prisoner con- victed of theft and sentenced to three years' imprisonment. The court up- held the sen- tence, but ob- served that the circumstances amounted rath- er to embez- zlement as there was at first no furtive taking. Con- viction altered accordingly.	No. 25,630, for Rs. 50 0 0 " 37,713, 25 0 0 " 17,868, 20 0 0 " 26,244, 20 0 0 " 24,180, 20 0 0 Cash, 16 8 0	
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Total Co.'s Rs. 151 8 0

2nd count, theft of the abovementioned Bank of Bengal
 Notes, amounting to Rs. 135, and Rs. 16-8 in cash, total Co.'s
 Rs. 151-8.

CRIME ESTABLISHED.—Theft of Bank of Bengal Notes, and
 cash amounting to Co.'s Rs. 151-8, entrusted to his charge.

Committing Officer.—Mr. A. Hope, joint-magistrate of Ba-
 raset.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs.

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February 10.
Case of
JYGOPAL
BENERJEA.

Remarks by the officiating additional sessions judge.—The prosecutor in this case is the police darogah of the thannah of Nychattee, in the district of Baraset and the prisoner, his assistant, in discharging the current duties of office, in writing and copying papers. Being desirous of sending a supply of grain for the consumption of his family, the former employed the latter in purchasing the store, and with that view entrusted to him four bank notes, 1 of 25 Rs. and 3 of 20 Rs. each. He also committed to his charge a bank note of 50 Rs. as a family remittance, and gave him 6 Rs. 8 annas in silver for road expenses, and deputed a servant to accompany him on the errand, into whose keeping, he gave other 10 Rs. in cash, with directions to convey the money and the grain, when purchased, to his family residence. On their arrival at Bushirhat, the place where the supply was to be procured, the prisoner went through the form of calling together the grain merchants and ascertaining the market value of the commodity. He fixed the rates at which he would buy and agreed to take the required quantity on the following day, when he promised to pay the purchase money by changing some notes, which he possessed. He also took from the prosecutor's servant the 10 Rs. he had in charge, on the plea that he might lose it while lodging apart from him, which appeared unavoidable. The following morning he decamped with the whole of the money. The evidence is clear as to his having received the notes and cash, undertaken to purchase the grain, made a pretence of executing the commission and absconded without completing it. In his defence, the prisoner acknowledged that he was commissioned to buy the grain by the prosecutor and that he started on the errand in company with the prosecutor's servant, but denies the custodian of the funds required to effect the purchase, which he alleges, were committed to the charge of two persons deputed to accompany him, the servant above alluded to, and another. To this frivolous defence however he adduces no evidence.

Sentence passed by the lower court.—Imprisonment with labor and irons for three (3) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) It is clearly proved that the money was fraudulently appropriated by prisoner No. 1. He immediately absconded. He has explained his absence, between the date of occurrence and that of his apprehension, by saying that he had gone to Agra by water, and that he had got within two or three days' distance of it, when he had to come back in consequence of the death of his companion. As the date of offence was 11th February and that of his apprehension 29th April, 1853, it is impossible that he could have arrived near Agra by water and got home again in the

1854. **February 10.** **Case of JAGOPAL BENERJEA.** intervening time. The untruth of his defence only helps to corroborate the impression of his guilt. The sessions judge has however convicted him of theft. The circumstances of the case amount rather to embezzlement, as there was at first no furtive taking of the money. I accordingly convict the prisoner of the 1st count charged, and confirm the sentence passed upon him.

PRESENT :

A. DICK, Esq., Judge.

GOVERNMENT AND HAGROO BABOO,

versus

Huzareebagh. GHASSEE ROY (No. 1.) AND GOOROOCHURN (No. 2.)

1854. CRIME CHARGED.—Wilful murder of Mungul Singh.

February 10. Committing Officer.—Capt. W. H. Oakes, principal assistant Governor-General's agent at Loherdugga.

Case of GHASSEE ROY and another. Tried before Major J. Hannington, deputy commissioner of Huzareebagh, on the 19th December, 1853.

Remarks by the deputy commissioner.—The prosecutor states that he was sowing rice in his field called Lupringbera, and the seed falling short, he went to his house for more. On returning he saw that the prisoner Gooroochurn had seized his, the prosecutor's, son, by the right hand,* and that the prisoner Ghassee Roy was loosing the cattle from the plough, whereat the prosecutor's son was remonstrating and was turning the plough round with his left hand, of which Booka Moondaree then laid hold, and which he continued to remonstrate, the prisoner Ghassee struck him on the crown of the head with a club. He fell, and when down, Ghassee poked him in the ribs twice with the end of the stick. Ghassee Roy's brother Kuree also struck Bissumber Pande who had endeavoured to interpose. The prisoner and his companions, about forty men in all, then went away. Prosecutor had his son carried home on a cot, and information was sent to the police station. At the same time, Ghassee Roy made a complaint against Bissumber and others. The assault was committed on a Sunday, and on Monday, Sobuns and Kishto burkundazes came from the police station. They saw the condition of the wounded man, and had him brought with them, carried in a litter, to the police station. The prosecutor accompanied, and the police officer put him and his son in the verandah of Burkut's house. Prosecutor begged the police officer to

* Literally rice hand, the hand used in eating rice, which is always lifted in the fingers.

take the depositions and to send up the case at once, but he kept putting it off. After three days he took some depositions, but still refused to send up the case, on the eighth day, being a Sunday, the prosecutor's son died. The police officer then told the prosecutor that he might burn and bury the body. Prosecutor, however, brought the body to the principal assistant. It arrived about midnight on Tuesday, and next day Wednesday, was examined by the civil surgeon. The prisoner Ghassee had not sown rice in Lupringbera on the day before this occurrence. Ghassee Roy has land in the same village, but at distance from the prosecutor's land. The deceased was about 25 years of age.

The prisoners plead *not guilty*.

No. 1, witness, Mungun Sahee, states that the prosecutor's son Mungul Singh, was ploughing, when the prisoner Ghassee Roy with forty men, came to the field and loosed one of the oxen, and forbade Mungul Singh to plough. But Mungul persisted, and said that the land was Gooman Singh's, and was part of that for which Gooman Singh had obtained a decree. The prisoner Gooroochurn had laid hold of Mungul Singh's right hand, and Mungul having hold of the plough with the other was struggling, when Booka caught his left hand, and then while Mungul was exclaiming against such violence, the prisoner Ghassee Roy struck him on the head with a bamboo-stick, Gooroochurn and Booka let him go and he fell down. Ghassee Roy poked him on the ribs of the left side; Ghassee and others then fled, and witness took up Mungul Singh, whose head was bleeding profusely and the brain* coming out. Witness and others carried him home on a cot, which was brought for the purpose from his house. Witness and Haroo Kotwar then went to give information at the police station, and just as they had given it, Ghassee Roy also arrived. The police officer did not record their information, but took the complaint of Ghassee, and deputed two burkundazes, named Kishto and Sobuns. These men came on Monday to the prosecutor's house, and they saw the wounded man, and had him brought on a cot to the police station. After three days his statement was taken. The police officer refused to send up the case, and on Sunday, Mungul Singh died. The assault was on a Sunday. The burkundazes came and took him to the police station on Monday, and on the next Sunday he died. The land in dispute is called Lupringbera, it has always been tilled by the prosecutor. The place is almost three miles from the police station. Witness went and stayed there with the prosecutor and deceased, but witness did not mention this in his former deposition. Deceased had been in good health.

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Case of
GHASSEE ROY
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* This did not appear on the examination of the body, but on such a point the witness might be mistaken.

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Case of
GHASSEE ROY
and another.

No. 2, witness Lochun, confirms the evidence of the first witness in all important particulars. Witness visited the deceased daily, while he was in the police station, and was present when he died on Sunday, being the eighth day after the assault.

No. 3, witness Beya, confirms the particulars of the assault of which he was an eye-witness. Did not go to the police station with deceased.

No. 4, witness Tooree, to the same effect as Beya.

No. 7, witness Dandoo, states that when the burkundazes Kishto and Soobuns came to make inquiry, witness was present at the examination of Mungul Singh's wound, which was measured by the witness Nago and was found to be five fingers breadth long, two broad, and two deep. Mungul Singh then told the burkundazes that it was Ghassee Roy who had wounded him. Witness and Boodhun carried Mungul Singh on a cot to the police station, where witness remained to the end with deceased, in the verandah of Burkut's house. On the third day the police officer took Mungul Singh's statement. Mungul Singh said that Gooroochurn and Booka had held him and that Ghassee Roy had struck him. The police officer, notwithstanding repeated entreaty of the prosecutor, refused to send up the case, and on Sunday the eighth day after the assault Mungul Singh died in the verandah of Burkut's house. Witness afterwards assisted in bringing the body to the principal assistant; witness had been seven days at the police station.

No. 8, witness Goora, as the preceding witness.

No. 9, witness Boodhun, assisted in carrying Mungul Singh to the police station, left him there and returned home.

No. 11, witness Nago, to the same effect as Dandoo.

No. 12, witness Lalchand, is the brother of the deceased. This witness confirms the statements of the prosecutor and of the witnesses to the fact, in all essential particulars as to the assault. Did not go to the police station.

No. 13, witness Boodhor native doctor, on the 6th July, examined the body of Mungul Singh. It was so much decomposed that external marks would not be discovered, but the skull was fractured as if by a blow or a fall, it was not in fragments. The body had been four days dead. The brain had not come out. The injury was severe and sufficient to cause death.

No. 14, witness Kishto, states that on Monday the 20th June, witness and Soobuns were deputed by the rajah and the police officer, with a written order, to make inquiry respecting a complaint preferred by Ghassee Roy. At a distance of two miles from the police station, a flood in the Kurkuree river prevented their progress. On Tuesday morning they crossed, and at noon reached Bughahae village where they found Gooman Singh, Bissumber Singh and Mungul Singh, but none other of the accused parties. On Wednesday morning all the villagers

were assembled, and a very slight wound was visible on Mungul Singh's head. Mungul Singh then said that Kare had wounded him. On the forenoon of that day, Wednesday, the accused parties were brought to the police station. The rajah and the police officer took down their statements and discharged them. They were examined on Wednesday and Thursday, and were discharged on Friday, Mungul Singh was brought in a litter, but he was able to walk. He died in five or seven days after his release from the police station. Kare is the brother of Ghassee Roy, who being the complainant in the case, Kare was not apprehended. The dates of these proceedings were from Monday the 20th to Friday the 24th June inclusive. Witness does not know how it is that the police examinations are dated the 26th June.

No. 15, witness Soobuns, states that he was deputed by a written order on Monday the 20th June, and returned to the police station on Wednesday morning, with the persons who had been apprehended, their answers were recorded that same day, excepting Gooman Singh's which was taken on Thursday, on which day all were discharged; Mungul Singh was wounded and was brought in a litter. Witness does not know when he died. Is sure of the date 20th June, because it was entered in the written order.

No. 16, witness Burkut, was absent from his house and has no knowledge of this case.

Before taking the defence of the prisoners, the original order mentioned by the witnesses Nos. 14 and 15, and also the diary of the police station were called for. The former is reported by the principal assistant to be not forthcoming. The latter has entries showing, that on the complaint of Ghassee Roy the witnesses Kishto and Soobuns were deputed on the 19th and returned on the 25th June, bringing with them Gooman Singh, Mungul Singh, and others as defendants; that no fray had occurred, and that only the prosecutor Ghassee Roy had been wounded. This diary is the fair copy furnished to the assistant's office.

The prisoner Ghassee Roy in his defence says that for five years past, he has had dispute with Gooman Singh about six parcels of land called Lupringbera in Baghahee village, and that on or after the full moon of Jeth last, he having one day sowed some grain, was completing the sowing on the next day, when Gooman Singh and several others came to the field, and some words passed in dispute between prisoner and Gooman Singh who at last struck prisoner on the head with a club, then Bissummer also struck prisoner who thereupon went and made complaint at the police station against Gooman and Bissummer. Next day prisoner came home, and on Tuesday Kishto and Soobuns came and took Gooman Singh, Bissummer and others including Mungul Singh to the police station, where their statements were recorded. On

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Friday, prisoner returned to his home. Neither prosecutor nor his forefathers had ever any land in Baghahee village. Tooree and Beya (witnesses 3 and 4) said before the police that they were not present at the dispute. Let the dates of the prisoner's complaint and of the prosecutor's complaint be compared. Mungul Singh has died of disease, he was but a stripling, and why should prisoner assault him? Prisoner by mistake has called the formerly disputed land Lupringbera; the dispute was about the six parcels called Bubondha and Dibud. There never was a dispute about Lupringbera until this year. The fray was at Lupringbera.

The prisoner Gooroochurn in his defence says that he never so much as laid eyes on Mungul Singh, and did not go to Ghassee Roy's field, nor to the police station. Gooman Singh has demanded rent from him, but he tills Ghassee Roy's land and pays rent to Ghassee Roy, and refused to pay to Gooman Singh who has therefore entangled him in the case.

For the defence.

No. 17, witness Monee, states that he had sown rice in the prisoner Ghassee Roy's field which Gooman Singh destroyed, and on witness telling the prisoner of this, he came to the field and began to remonstrate with Gooman Singh who thereupon struck him two blows with a club, after which prisoner went and complained at the police station, Mungul Singh died of bowel-complaint at Tamar. Witness was not himself at Tamar then, but saw the body when it was brought home. Mungul Singh had been ailing for a month; Mungul Singh was not in the field, when the dispute occurred. The land is called Lupringbera. Ghassee Roy went that same day to the police station. The others went three days afterwards, having been stopped by the river.

No. 18, witness Samor, Mungul Singh died of dysentery at the police station, witness was not then present. He had been ill five or six days before. He was taken to the police station, on a charge of assault preferred by the prisoner Ghassee Roy. He went on Monday and died on Sunday.

No. 19, witness Rutnoo, witness and others had one day sown rice for Ghassee Roy in Lupringbera. Next day it was destroyed by Gooman Singh, and when Ghassee Roy remonstrated he was beaten by Gooman Singh and Bissummer. Ghassee Roy then complained at the police station and the next day the burkundazes set out, but were stopped by a flood in the river, and on the third day they came to the village, took up all the people and brought them to the station. Mungul Singh went also; he had had a coolie for three days before. Witness gave evidence at the station on the day of arrival, and immediately the same day returned home. Five days afterwards witness heard of Mungul Singh's death, and when the body was brought back to the village he saw it. There were no marks of wounds on it.

Question.—You have said before the principal assistant that you did not see the body of Mungul Singh, how is it that you now say you have seen it?

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Answer.—The truth is, that I did not see the body.

No. 20, witness Goonee, on Friday saw Mungul Singh at Tamar, he had bowel-complaint. On Saturday he could not swallow, and on Sunday he died. Afterwards the prosecutor brought his body to Baghahee village. Witness had seen Mungul Singh on Friday and returned home that day. On Sunday he saw the body. There were no wounds on it.

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No. 21, witness Medny, was present when Gooman Singh and Bissumber assaulted the prisoner Ghassee. Witness went to the police station, with Mungul Singh and others, gave his evidence and returned home the same day. Mungul Singh had been sick and died of the sickness. Saw his body when it was brought back six or ten days afterwards.

No. 22, witness Resa, was present when Gooman and Bissumber assaulted the prisoner Ghassee Roy. Witness knows of Mungul Singh's illness and death by hearsay only. Saw the body when it was brought back to the village.

No. 23, witness Bheem, saw Mungul Singh at Tamar, he had bowel-complaint, as witness saw on three occasions. Witness told his friends to look after him, when he died on Sunday; witness helped them to cross the river with the body. Witness saw deceased on Friday; had not known him before.

No. 24, witness Dhun Singh, on Friday was at Tamar with Bheem. The prosecutor asked Bheem to come and see Mungul Singh, witness went also and saw that Mungul Singh had bowel-complaint. On Saturday he could not swallow, and on Sunday he died. Afterwards saw his body being carried towards Baghahee village.

No. 25, witness Sham Roy, is a physician, and was called by the prosecutor to attend Mungul Singh who had bowel-complaint. Witness gave him milk and water during the night, he died in the morning, on Sunday. There were no marks of wounds on him.

No. 29, witness Rundsey, was present at the dispute between Gooman Singh and the prisoner Ghassee at Lupringhera, on Sunday Ghassee made complaint and on Tuesday the parties were brought to the police station, Mungul Singh was not present at the dispute. He was ailing before he went to the police station, and died there, a fortnight after the dispute. Witness did not go to the station, did not see Mungul die, but saw wood made ready and saw the body brought home on a Sunday.

No. 30, witness Doorjee, knows nothing but hearsay.

No. 31, witness Rutnool, went to the police station with the parties, was there for three days and then came home. On a Sunday, fifteen days after the dispute, Mungul Singh's body was brought back.

1854. No. 32, witness Leraz Manky, Mungul Singh went on foot to the police station and was quite well. Witness heard of his death, fifteen days afterwards.

February 10. Case of GHASSEE ROY and another. No. 33, witness Booka, one day in Jeth, Ghassee Roy sowed rice in Lupringbera, and next day had a dispute with the prosecutor about it. Some one struck Ghassee Roy on the head, and witness then running to the place saw that Ghassee Roy was wounded, and a man lay on the ground. Beya and Luchmun and Tooree (witnesses Nos. 2, 3, 4,) had hold of him, but witness does not know who he was. He was one of the prosecutor's side.

The jury whose names and occupations are noted below,* find the prisoners guilty of culpable homicide.

There arises in this case considerable difficulty as to the date of its occurrence. The date entered in the calendar is the 19th June, Sunday, which corresponds with the entry in the police diary, as noticed above at the close of the evidence for the prosecution. The witnesses Kishto and Soobuns are very positive in stating they were deputed on Monday the 20th June, which date though near to, *disagrees* with the date in the diary. According to the evidence of these witnesses, they returned on the morning of Wednesday the 22nd June, but the diary has 25th of June, another *disagreement*. The evidence for the prosecution shows very clearly that the parties accused by the prisoner Ghassee Roy were detained three days, before their statements were recorded at the police station. This following the evidence of Kishto and Soobuns, makes the date of examinations to be about the 25th June, but following the diary about the 28th June, whereas the recorded statements are dated the 26th June. It is further to be observed that the police officers' first report is dated the 29th June, and that it was received by the principal assistant on the 5th July. But from the evidence before this court, other dates can be inferred with much precision. It is throughout manifest that the dispute occurred on a Sunday, and that the deceased died on a Sunday. Now the date of the death of Mungul Singh, is without doubt Sunday, the 3rd July, for the Native doctor, who examined the body on the 6th July, deposes that the body had been four days dead. This brings the question into a new form. What was the interval between the injury and the decease. The evidence for the prosecution answers distinctly that the death occurred on the 8th day. Therefore the blow was given on Sunday the 26th June. On the next day the parties were brought to the police station, on the 29th their statements were recorded. This is the date of the report, and I infer that the statements have been antedated, as well as the in-

* Lalla Gazraj Singh, Mokhtar.
Lalla Luchmeenarian, Mokhtar.
Ramkansaie Roy, Mokhtar.

formation of Ghassee Roy which is dated 19th, this being done for the purpose of increasing the apparent interval between the injury and the event. For though Mungul Singh did not die on the 29th June, the report of that date only reached the principal assistant on the 5th July, the same day, on which Mungul Singh's body was brought in. *The report was not forwarded till the death had occurred.*

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The sum of the evidence for the prosecution I, therefore, understand to be this. That on Sunday the 26th June last, the prisoner Ghassee Roy had a dispute with the deceased Mungul Singh respecting the right of tillage, that during altercation, the prisoner Gooroochurn laid hold of one hand of the deceased, that Booka, who has absconded, held the other, and that while Mungul Singh, himself unarmed, was thus hindered from escape or defence, the prisoner Ghassee Roy inflicted on him with a club, a heavy blow on the skull which was thereby fractured, the injury being sufficient to cause death, and that Mungul Singh died thereof on the 8th day afterwards.

To the evidence for the defence generally I attach no credit whatever, except in so far as it agrees with that for the prosecution. Thus the witness Sonoo, No. 18, states that the deceased went on Monday and died on Sunday. Rutnoo No. 19, makes the interval, between the prisoner Ghassee Roy's complaint and Mungul Singh's death, to be three days and five days, that is eight days. And the witness Booka very strongly confirms the tenor of the evidence given by the witnesses to the fact. He saw a man lying on the ground, to whom they were attending. Other witnesses for the defence make the interval, between the dispute and Mungul Singh's death, to be fifteen days, they state that he was not present at the dispute, and that he died of a bowel-complaint. These things I do not believe.

That the police officers had behaved unfaithfully is, I think, apparent.

The prisoners are charged with wilful murder, I find them guilty of that offence. Though the prisoner Ghassee Roy does in a manner plead provocation, inasmuch as that he was assaulted by Gooman Singh and Bissummer Singh, yet he does not so much as insinuate that the deceased gave him any provocation. Under these circumstances, and with reference to the orders of Government, No. 2173, dated 11th November last, a sentence of death might be recommended, but as this case occurred before those orders, I will only recommend that the prisoner Ghassee Roy be sentenced to imprisonment for life in transportation, with hard labor in irons, and that the prisoner Gooroochurn, who is the less culpable of the two, be sentenced to imprisonment for ten years with hard labor in irons. Compared with other cases that have occurred in these districts, this mitigated sentence is severe. But disputes about land are here so frequent, and in

1854. them life is so little regarded, that a rigorous administration of the law in such cases may be salutary.
- February 10. *Remarks by the Nizamut Adawlut.*—(Present: Mr. A. Dick.)
 Case of GHASSEE ROY and another. The marked discrepancies between the statement of the deceased, soon after he was wounded, and of his father, the prosecutor at the trial, an alleged eye-witness as to who inflicted the wound; also the equally decisive discrepancy between the depositions of the prosecutor and other eye-witnesses; and that of the medical officer, as to the appearance of the fatal wound, coupled with the fact, that the deceased lived eight days after he was wounded, and the fact of gross misconduct on the part of the police in never reporting the case even of the adverse side, until after the death of Mungul Singh; and of the manifest tampering with the records of the thannah, render the evidence for the prosecution so unsatisfactory, that no conviction can be safely founded on it. The court, therefore, acquit both prisoners, and direct their release.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT,

versus

Hooghly.

DHURMODOSS TANTEE.

1854. CRIME CHARGED.—Having belonged to a gang of dacoits. Committing Officer.—Baboo Chunder Sekur Roy, deputy magistrate of Hooghly, under the commissioner for the suppression of dacoity.
- February 10. Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 30th January, 1854.
- Case of DHURMODOSS TANTEE. *Remarks by the officiating additional sessions judge.*—This is a commitment under the provisions of Act XXIV. of 1843, and the prisoner pleads guilty to the charge of having belonged to a gang of dacoits.
- Prisoner convicted of having belonged to a gang of dacoits and sentenced to transportation for life. The approver's evidence establishes the crime against the prisoner, and proves his complicity in seven dacoities with organised gangs.

The prisoner confessed crime before the deputy magistrate, under the commissioner for the suppression of dacoity, and admitted that he has committed ten dacoities under four sirdars.

The prisoners detailed confession embraces thirteen dacoities, documentary evidence of the occurrence of all, except one, of which will be found in the record of the trial. I believe both in the truth and voluntariness of this confession.

The prisoner repeats his plea of guilty before this court and makes no defence. 1854.

I convict the prisoner of having belonged to a gang of dacoits, on his own confessions and the evidence of the approver, and propose that he be sentenced to transportation for life. February 10.

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Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) The prisoner has confessed throughout to having belonged to a gang of dacoits. The approver's evidence confirms the narration of the prisoner, as to the occurrence of the several dacoities in which he admits he was concerned. I confirm the sentence proposed by the sessions judge.

PRESENT :

A. DICK, Esq., *Judge*,

B. J. COLVIN, Esq., *Officiating Judge*.

TRIAL No. 2.

GOVERNMENT,

versus

JEETOO KOOMHAR (No. 3,) SHAIK GENDA (No. 4.)
BUNDHOO DOSADH (No. 5,) JHUMMUN GOALLA
(No. 6,) AND GUNSHA DOSADH (No. 7.)

TRIAL No. 3.

GOVERNMENT,

versus

MUSSUMMAT JEEBIA KOOMHAREEN (No. 8.)

Behar.

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CRIME CHARGED.—*Trial No. 2*, prisoner No. 3. 1st count, preferring a false and malicious complaint against Shaik Hoosseinee; 2nd count, perjury, in having, on the 19th September, 1853, deposed under a solemn declaration taken instead of an oath before the deputy magistrate of Nowada, that two or three persons in my house having died, my *sumdhma* (or my sister's mother-in-law) came from Hosseinpoor for *Poor-sish* or to condole. In the month of Bhadoon, on Sunday, I do not recollect the date, Shaik Hoosseinee Meea, inhabitant of Usthawan, sent for two pairs of earthen pots from my house for *nawaz*, upon this my mother and *sumdhma* carried them to the residence of the said Shaik Hoosseinee Meea, and after delivering over the pots, came back; after which, Hoosseinee Meea's child fell sick, when Hoosseinee Meea sent Shubrattee Doomeea and Joomun Jolaba, who seized my mother and *sumdhma* and carried them to Hoosseinee's at noon. Hoosseinee Meea accused my

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JEEBIA KOOM-
HAREEN.

Charges of
perjury cannot
be preferred
against prose-
cutors or wit-
nesses, founded
on their depo-
sitions record-
ed, before any
one is on trial.

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to deliver the pots, and my child has been taken ill, you had better exorcise the evil spirit; to this my *sumdhma* said, I am not a witch, how can I exorcise the spirit, and on her refusing to comply with his request, he beat them both and burnt my *sumdhma* with a *hussooa*, or sickle, and then both eat cow's flesh. I do not know what he has done with my mother, whether he has killed and thrown her away or what; and has given Mussummat Jeebia, my *sumdhma*, 25 rupees, and satisfied her. Such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case; 3rd count, suborning Shaik Genda Moosulman, Bundoo Dosadh, Jhummun Goalla and Gunsha Dosadh, witnesses, to commit perjury. Prisoner, No. 4, perjury in having on the 1st October, deposed, under a solemn declaration taken instead of an oath, before the deputy magistrate of Nowada that on reaching the door of Shaik Hoosseinee, I saw the two, a Koomhareen (whose name I do not know) inhabitant of mouzah Hoosseinpoor and a Koomhareen, resident of the village, mother of Jeetoo Koomhar, weeping. I saw Shaik Hoosseinee, Shaik Bechun and Shaik Sufdur, sitting down; there was a great crowd congregated together, who were all abusing the Koomhareens and accusing them of having bewitched Hoosseinee's son, desiring them to exorcise the spirit from the child or else be punished severely. Afterwards Shaik Hoosseinee burnt the Koomhareen of mouzah Hoosseinpoor with a hot instrument, called *hussooa*, on her body and made the mother of Jeetoo Koomhar eat cow's flesh, and Shaik Hoosseinee seized and carried the mother of the said Jeetoo Koomhar into the interior of his house. I do not know what has become of her, whether she is alive or dead. Prisoner, No. 5, perjury, in having, on the 1st October, 1853, deposed under a solemn declaration taken instead of an oath before the deputy magistrate of Nowada, that on reaching the door of Hoosseinee Meea, I heard a noise. Afterwards a Koomhareen (whose name I do not know) inhabitant of mouzah Hoosseinpoor, and one Koomhareen of mouzah Usthawan, came to Shaik Hoosseinee's with pots; that Hoosseinee's child falling sick, he beat them and burnt the Koomhareen of mouzah Hoosseinpoor on her body in the interior of his house with a hot *hussooa*, which he heated in the *borsee*, containing a charcoal fire; that he beat Jeetoo Koomhar's mother, who is not forthcoming. I do not know what has become of her; that he made the mother of Jeetoo Koomhar eat cow's flesh three times in my presence, which the mother of the plaintiff threw out of her mouth. Prisoner No. 6, perjury, in having on the 1st October, 1853, deposed under a solemn declaration taken instead of an oath, before the deputy magistrate of Nowada, that I heard a noise in the house of Hoosseinee Meea, and also heard that a

witch had come and was being beaten. I saw her being beaten. Upon this Hoosseinee Meea said, cure my child, who is ill, and I will let you go, or else I shall insult or affront you. Upon this Sheikh Hoosseinee burnt the Koomhareen of mouzah Hoosseinpore on her body, with a hot *hussoo* and made the mother of Jeetoo Koomhar eat cow's flesh, after which he carried the mother of the said Jeetoo Koomhar into the interior of his house; I do not know what he has done with her. Prisoner No. 7, perjury, in having, on the 1st October, 1853, deposed, under a solemn declaration taken instead of an oath before the deputy magistrate of Nowada, that on reaching the door of Hoosseinee Baboo, I saw the Koomhareen of mouzah Hoosseinpore, her son and a Koomhareen of Usthawan, Jeetoo Koomhar's mother and Jeetoo Koomhar, the four weeping; Sheikh Hoosseinee said that they are all witches; upon this the mother of Jeetoo Koomhar said that the Koomhareen of Hoosseinpore is not a witch; afterwards I saw Hoosseinee burn the Koomhareen of Hoosseinpore with a *hussoo*, after which, Suffdur Meea again with the same heated *hussoo* burnt her, such depositions being false and having been intentionally and deliberately made on a point material to the issue of the case. *Trial No. 3.* Prisoner, No. 8, 1st count, preferring a false and malicious complaint against Owlad Ally, Bohoree Mussulmans, Goneshee Koomhar, Jaythoo Koomhar, Jungle Koomhar and Edul Koomhar; 2nd count, perjury in having on the 19th September 1853, deposed, under a solemn declaration taken instead of an oath before the deputy magistrate of Nowada, that on hearing of the death of my granddaughter, I went from Hoosseinpore to Usthawan on Wednesday to the house of my *sumdhma*, Guneshee Koomhar; the day I arrived there, that day Wednesday, two hours before sunset, my relative Guneshee Koomhar's granddaughter died. I was accused of witchcraft, and they began to quarrel with me; after this, Guneshee Koomhar, Jaythoo Koomhar, Jungle Koomhar and Edul Koomhar made a complaint against me to Meer Owlad Ally, inhabitant of mouzah Usthawan, then Meer Owlad sent his slave Bohoree, who seized and carried me to his master's, who ordered me to be beaten and burnt. Upon this the aforesaid four Koomhars beat and kicked me, and the slave Bohoree burnt my back and hand on several places with a heated *hussoo* or sickle, the marks of which are still perceptible on my person. Mougur Koomhar Shaik Jano, Gunesha Dosadh and Mungur Dosadh are my witnesses. On the 20th September, 1853, on her being interrogated as to whether she could recognize Bohoree defendant, who you state, has burnt you, replied that I can recognize him; upon which a few persons being collected together amongst whom was Bohoree, she was asked to point out Bohoree, when she caught hold of the hand of one Shubrattee, inhabitant of mouzah Burrosur (who was in attendance before this court in the case of

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Urzanee and Tookun Singh) and said, this is Bohoree, such depositions being false and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer.—Mr. A. G. Wilson, deputy magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 10th January 1854.

Remarks by the sessions judge.—I submit these two trials together, with a view to more convenient hearing, as originating in counter-complaints.

Jeetoo, prisoner, No. 3, on 17th September, petitioned the deputy magistrate of Nowada, complaining against one Shaik Hoosseinee, resident malik of his village of Usthawan, to the effect "that his mother and *sumdhma*, his sister's mother-in-law, that is Mussummat Jeebia, prisoner, No. 8, having had occasion to take some earthen vessels to Shaik Hoosseinee's, they were called back, and accused of having bewitched one of his children, who had subsequently fallen sick, for which they were beaten, the mother was made to eat cow's flesh, and Jeebia was burnt with a hot iron. Jeebia had been bought over not to complain, but his mother had been detained, and was not forthcoming, and his family were out of caste by such oppression, he complained." He deposed at length to the truth of this complaint on 19th idem, supported by the depositions of his witnesses, prisoner No. 4 to prisoner No. 7, on 1st of October following, as detailed in the indictment.

Jeebia, prisoner No. 8, on 15th September last, petitioned the deputy magistrate of Nowada, complaining against Owlad Ally, another of the Usthawan maliks, to the purport "that happening to visit her relative Guneshee, Jeetoo Koomhar, prisoner No. 3's father, the same day his granddaughter died, her relatives, the Koomhars of Usthawan, accusing her of being a witch, took her before Owlad Ally, who had her beaten, and burnt with a hot iron by his slave, Bohoree." She deposed to the truth of this complaint on 19th idem, as detailed in the indictment. She brought three witnesses before the deputy magistrate, who merely deposed to having witnessed her capture, and to having heard of her being burnt. Bohoree being present in the deputy magistrate's court, and Jeebia being questioned if she could recognize him, and answering in the affirmative, she brought out from amongst the crowd Shubrattee (witness No. 3,) instead of Bohoree, although both are described as being of markedly different personal appearance. The native doctor of Nowada's report, No. 3, of 19th September, mentions marks of burns on Jeebia's person, such as could not have been self-inflicted, unaccompanied by any particulars, but as seen by this court pointed out by herself on her back, they looked of the most trivial and uncertain character.

Nothing further has been heard of Jeetoo's missing mother, beyond the police return No. 12, 27th September last, reporting her being concealed in Owlad Ally's house.

Shaik Hooseinee voluntarily attended the deputy magistrate's court, on 3rd October last, No. 17, representing "that being at variance with Owlad Ally, and other resident share-proprietors of Usthawan, they tormented him by getting up false complaints against him, in proof of which, he filed copy of proceedings cantonment magistracy, Dinapoor, 3rd February, 1853, No. 18, and a decision of the deputy magistrate of Bar's court, 6th September, 1853, No. 9, which acquitted Shaik Hooseinee on a charge of cattle theft, supported as therein mentioned by the evidence of the prisoners, Nos. 4, 5 and 6, copy of one of which, Bundhoo Dosadh, prisoner No. 5, but giving a different parentage, and abode, is with the record No. 26, dated 16th August, 1853." He also stated that he was returning home from Bar, and hearing at Behar of Owlad Ally's oppression towards Jeebia, he had reported it at the thannah, through his servant, Bundhoo, as was found thus recorded in the thannah diary, under date 14th September last, as mentioned in the deputy magistrate's proceedings of 17th idem.

The deputy magistrate dismissing both complaints, and referring to the disreputable disputes between the share-proprietors of Usthawan, as originating these false complaints on both sides, committed the prisoners for the perjuries now under consideration.

The evidence against the prisoners consists of the writers of their recorded depositions, and in the case of Jeebia with the addition of Shubrattee's, (witness No. 3) the person whom she had erroneously recognised as Bohoree.

The prisoners' defences rest on the truth of their complaints respectively. Jeetoo and prisoners, Nos. 4 to 7, called witnesses, who, however, knew nothing in their favor. Jeebia, prisoner, No. 8, named no witnesses, but pretended that she was unconscious when Bohoree burnt her, and that she had never told the deputy magistrate that she could recognize him.

The futwa of the law officer, supposing nothing on record to prove the falsity of Jeetoo and prisoners, Nos. 4 to 7's depositions, finds perjury unproven and acquits them; but arguing that Jeebia's complaint had been got up to nullify Jeetoo's, and had proven false by her non-recognition of Bohoree, convicts her of perjury and declares her liable to discretionary punishment by *tazeer*.

I find both complaints to be equally false and unfounded, internal evidence to such effect being apparent in each. I regard each as manifestly concocted in all its details. Both also, on their own shewing were tardy, temporizing complaints. Jeebia's the first, on 15th September, gave the day of the occurrence

1854.

February 10.

Cases of
JEETOO KOOM-
HAR and
others, and
JEEBIA KOOM-
HAREEN.

1854. complained of by her, as nine days previous, or 6th September. Jeetoo's two days afterwards dated his as occurring on 24th February 10. Bhadoon, corresponding 11th September, whilst Sheik Hoosseinee's information to the police dates 14th September. I look at Jeetoo's and the four other prisoners', his accomplices, depositions before the deputy magistrate, on 1st October last, as so many palpable perjuries, conclusively proven such by their gross improbabilities, inconsistencies and contradictions under cross-examination by the deputy magistrate on the same date, whilst two of them as acknowledged, if not a third, Bundhoo, prisoner No. 5, had so recently borne discredited, and apparently incredible testimony in the deputy magistrate of Bar's court, against the same party, again so soon accused by them, viz., Sheik Hoosseinee, as to suffice of itself to corroborate the infamous character of their testimony, whilst that of the 4th or Gunsha's, prisoner No. 7, is that of a recently time-expired convict. Lastly, I regard the two complaints in their palpable falsities inseparable, and therefore in such respect strongly corroborative of each other. So far differing with the law officer, I convict Jeetoo, Gendoo, Bundhoo, Jhummun and Gunsha, prisoners Nos. 3 to 7, and Jeebia, prisoner No. 8, of perjury, and consider that they are only needy tools in the hands of designing persons of popular, but really undeserving respectability, such as Sheik Hoosseinee on the one side and Owlad Ally on the other, who misuse their wealth and local influence to the prostitution of justice, and debasement of all below them, and the correction of which, it is much to be regretted for the ends of justice, neither the character of the people, nor our judicial system seem practically equal to. Thus regarding their criminality in a minor degree, I would sentence each of the prisoners alike to three years' imprisonment with labor and in irons; and in the case of Jeebia with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court, having perused the papers connected with the cases of Jeetoo Koomhar and others, and Musst. Jeebia Koomharen, observe that the charges and the evidence in support of them may have been false, but there is no direct or positive proof of their falsehood. Moreover, it is evident that the depositions of the complainants and witnesses were taken before any one was put on trial, nor was any person put on trial in consequence of them. The depositions were recorded in the preliminary investigation required by Clause 6, Section 2, Regulation III. 1812, and the deputy magistrate, distrusting the truth of the charges, dismissed the complaints. He might have punished under Section 5, Regulation VII. 1811, but to commit for perjury was, under the circumstances, quite improper. We therefore direct the acquittal of the prisoners.

PRESENT:

H. T. RAIKES, Esq., Judge.

GOVERNMENT ON THE PROSECUTION OF MAHOMED
SABEER,

versus

SHEIKH ESOOF (No. 14,) SHEIKH SEERIE (No. 15.)
AND SHEIKH SUBDER (No. 16.)

Sylhet.

1854.

CRIME CHARGED.—1st count, burglary in the house of informant and theft of property to the value of Rs. 112-1-9, on the 3rd November, 1853, corresponding with 19th Kartick, 1260 B. S.; 2nd count, with having knowingly in their possession the property obtained by the above burglary; 3rd count, No. 16, with being accessory before and after the facts of the 1st and 2nd counts; 4th count, with being privy to the charges contained in the 1st and 2nd counts.

February 10.
Case of
SHEIKH
ESOOF and
others.

CRIME ESTABLISHED.—Prisoner No. 14, burglary and theft, and of being knowingly in possession of stolen property. Prisoners Nos. 15 and 16, accessory to the above crime and being knowingly in possession of stolen property.

One prisoner
convicted of
burglary, and
two others as
accessories and
being know-
ingly in pos-
session of sto-
len property.
Sentence pas-
sed by the
sessions judge
upheld in ap-
peal.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 28th December, 1853.

Remarks by the sessions judge.—The prosecutor states that his house was robbed on the 3rd November, 1853, and knowing the prisoner Sheikh Seerie to be a bad character he went and accused him of the theft, he denied the fact, but said he thought Esoof had committed it, as he had been with him at night on a marauding excursion. Esoof on being apprehended, confessed that he had gone with Seerie, and that he stood outside while Seerie and others committed the burglary, and that he had received part of the stolen property.

Various articles were, on searching the houses of the prisoners, produced, which were identified by the prosecutor and his witnesses, and their own confessions leave no doubt whatever of the prisoner's guilt. Sheikh Seerie prisoner (No. 15,) is a proved bad character, whilst Esoof has once before been apprehended, on a charge of theft. Subder is Sheikh Seerie's brother and lived in the same house with him, but he has not before been charged with any crime.

Sentence passed by the lower court.—No. 14, three years' imprisonment, No. 15, five years' imprisonment, and No. 16, two years imprisonment, all with irons and a fine of 25 rupees each under Act 16, of 1850.

1854.

February 10.

Case of
SHAIKH
Essoor and
others.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The property found in the possession of these prisoners and the confessions of two of them, fully warrant their conviction. I see no reason to interfere with the sentence passed upon them.

PRESENT:

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT ON THE PROSECUTION OF SHAIK
MOOSEEM,

versus

Sylhet.

GOUR RAM MAHARA.

1854.

February 10.

Case of
GOUR RAM
MAHARA.

CRIME CHARGED.—Wilfully and maliciously cutting off the right ear of the informant, and thereby wounding him.

CRIME ESTABLISHED.—Maliciously wounding.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 11th November, 1853.

Prisoner convicted of having maliciously wounded the prosecutor, under the idea that the latter had enticed away the prisoner's brother's wife. Sentence passed by the sessions judge upheld in appeal.

Remarks by the sessions judge.—The wife of the prisoner's brother eloped from the prisoner's house, and as he suspected the prosecutor of having enticed her away, he on meeting him knocked him down with a heavy club and with some sharp instrument cut off his ear. Of the truth of the prisoner's suspicions there is no evidence before the court.

The prisoner pleaded guilty before the darogah, the magistrate and this court, to the charge made against him, but pleaded in extenuation the provocation received. He called no witnesses.

Sentence passed by the lower court.—Three (3) years' imprisonment without irons, and to pay a fine of 25 rupees on or before the 20th instant, or in default of payment to labor until the fine be paid or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes). The prisoner has throughout pleaded guilty, and in this appeal admits having done what he is accused of, but justifies the act on the plea that the prosecutor had enticed away his brother's wife for purpose of prostitution. There seems no ground for this accusation, and I affirm the sentence passed upon him.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

NAHAR MAHOMED,

versus

MOHURUM ALI (No. 30, APPELLANT,) AZIMUDDIN
ALIAS AZIM KAZI (No. 31, APPELLANT,) ROMIZUDDIN
KHONDKAR (No. 32, APPELLANT,) AND MAHOMED
ALI ALIAS ALI MEAN (No. 33.)

Tipperah.

1854.

CRIME CHARGED.—1st count, knowingly uttering fabricated coin; 2nd count, fraudulently selling to the prosecutor 2 gilt rupees as gold mohurs, knowing them to be counterfeit.

February 11.

CRIME ESTABLISHED.—Prisoners Nos. 30 to 32, aiding and abetting in knowingly uttering fabricated coin. Prisoner No. 33, knowingly uttering fabricated coin.

Case of
MOHURUM
ALI
and others.

Committing Officer.—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, officiating sessions judge of Tipperah, on the 22nd November, 1853.

Remarks by the officiating sessions judge.—The prisoner No. 33, proceeded in company with the prisoners Nos. 30, 31 and 32, to the prosecutor's house and pleading a sudden demand for money, offered to sell him two gold mohurs, for the genuineness of which the prisoner No. 30 vouched. Ultimately the prosecutor agreed to give 32 rupees for the two coins, which proved to be sicca rupees washed over with gold.

Three prisoners convicted by the sessions judge of aiding and abetting in knowingly uttering fabricated coin, acquitted in appeal.

The prisoner No. 30 confessed before the magistrate that he was present, when the sale took place, but not that he was aware the coin was counterfeit. The prisoners Nos. 31 and 32 confessed in the mofussil only. The prisoner No. 33 denied throughout.

They pleaded not guilty before the sessions court, but the evidence for the prosecution appearing to me sufficient, I, in concurrence with the Mahomedan law officer, convict them, the prisoner No. 33, of knowingly uttering fabricated coins and prisoners Nos. 30, 31 and 32, of being accessaries thereto.

Sentence passed by the lower court.—Prisoners Nos. 30 to 32, to be imprisoned, without irons, for 3 years from this date and to pay a fine of 50 rupees, on or before the 15th December next, or in default of payment to labor until the fine be paid or term of sentence expire. Prisoner No. 33 to 14 years' imprisonment and 2 years in lieu of corporal punishment, total 16 years' imprisonment with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) I do not consider the evidence in this case at all satisfactory. The prisoner No. 32 from whom a clue was first obtained (as

1854. stated by the darogah) did not support his previous information
 February 11. when before the magistrate. The witnesses only speak, generally,
 Case of to having once seen the prisoners together at the prosecutor's
 Mohurum shop bargaining some eighteen months ago, about the sale of two
 Ali gold mohurs, which, they heard afterwards, turned out to be gilt
 and others. rupees; but the prosecutor himself never said any thing on the
 subject, until these enquiries were made by the police, many
 months after the occurrence. The prisoner No. 30, does not
 confess any guilty knowledge, at the time the coin is said to have
 been passed off for gold mohurs. On the whole I do not think
 there is sufficient to convict the prisoners, and I therefore acquit
 them.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND MR. T. GRANT,

Bhaugulpore.

versus

WUZUNLALL.

1854.

February 11.

Case of
WUZUNLALL.

CRIME CHARGED.—1st count, embezzlement of Rs. 372-6-5½; 2nd count, theft of the above sum of rupees.

CRIME ESTABLISHED.—Embezzlement of Rs. 372-6-5½.

Committing Officer.—Mr. W. T. Tucker, magistrate of Mon-ghyr.

Prisoner con-
victed of em-
bezzlement
and theft, and
sentenced to
five years' im-
prisonment
and a fine
equal to the
amount em-
bezzled. Sen-
tence upheld
in appeal. A
prosecution for
embezzlement
in a criminal
court is not
vitiated by the
institution of a
suit in the re-
venue court to
recover the
amount.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 25th October, 1853.

Remarks by the sessions judge.—Prisoner pleads *not guilty*.

Mr. Grant is a *Suzawul* appointed by the collector of Bhaugulpore, to collect certain rents from an attached estate, which rents he pays into the collectorate, receiving a commission of ten per cent, for his superintendence.

The prisoner, Wuzunlall, was his *tuhseeldar* and confidential agent, and had the immediate charge of all the collections, amounting to about 10,000 Rs. per annum.

It appears on evidence that Wuzunlall, thinking Mr. Grant entirely occupied by his indigo manufactory, brought him his books to show that all was square, and that in these books was an entry of 372-6-5½, as paid into the collectorate of Bhaugulpore, which had never been so paid. Mr. Grant, notwithstanding his being so much occupied with his indigo works, came at once into Bhaugulpore and applying for his commission, found that the 372-6-5½ in question had not been paid in; Wuzunlall was questioned on the subject, and asserted before Mr. deputy collector Piron and Mr. Hartly, witnesses Nos. 7 and 1, that he had

paid the money and held the treasurer's receipt for the same. Mr. Grant then appointed to meet him, Wuzunlall, at the collectorate to produce this receipt and clear up the matter, but he never came, and when sent for, was not to be found. Mr. Grant produces Wuzunlall's *jummachurch* book, containing the entry of the 372-6-5½, as "paid into the collectorate with his own hands, on the 2nd of July, 1853," and the detail collection book with the items of collection corresponding with this entry; these books are both produced and sworn to as the books of Wuzunlall by witnesses, Nos. 2, 3 and 5.

1854.

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Case of
WUZUNLALL.

Kripanath Doss, witness No. 2, is the Hindee mohurir kept as a check on the tuhseeldar. He swears to the item of 372-6-5½, having been entered in his Hindee account from the *Persian* of Wuzunlall. Behareelall Dutt, No. 3, is the putwaree of the village. Boodhee Roy, No. 4, is a peadah paid by the collectorate from the estate nominated by, and in attendance on, Wuzunlall; he accompanied him in his flight from Bhaugulpore, but did not know till they got to Monghyr, that Wuzunlall was flying from justice.

Mukhunlall, No. 5, is the mohurir of the maliks of the attached estate, kept as a general check on the collections; he swears to Wuzunlall having first entered the 372-6-5½ in his book, whence he (witness) copied it into his own.

Prisoner in his defence says he gave in his accounts, and obtained a quittance from Mr. Grant up to April 1853; that the accusation of embezzlement of 372-6-5½ is false; that Mr. Grant used to take money from his *tuwel* for indigo purposes, vide his purwannah and receipt, which will show why the accusation is brought.

The jury find a verdict of guilty on the 1st count of the indictment, in which I concur; conviction on the second count follows under the law.

There is no doubt of the guilt of the prisoner, his defence relates to a period prior to that under consideration, the purwannah he gives in, is a quittance up to April 1853, while this occurrence took place in July of the same year; the receipts he gives in are mostly of 1852, none relate to any period not considerably prior to the date of embezzlement. I sentence Wuzunlall prisoner, to five years' imprisonment with labor and irons and a fine of 372-6-5½ under act 16 of 1850.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes). A mokhtar appeared on the part of the prisoner and urged that a summary suit, under Regulation VII. of 1799, having been instituted by the prosecutor, for the recovery of the sum alleged to have been embezzled, no criminal charge was legally sustainable against the prisoner out of the same transaction; 2ndly that the prisoner held receipts signed by the prosecutor,

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1854. which exonerated him from the charge of having embezzled the money.

February 11. On the first plea I hold, that the validity of the proceedings in the criminal court is in no respect vitiated, by the fact of a civil action having been at one time brought in the revenue court to recover the amount; it does not even in this case touch the propriety of the award for compensation, under Act 16 of 1850, for the summary suit was never carried on.

Case of
WUZUNLALL.

The second plea is not borne out by the record; there are no receipts of the prosecutor which cover the amount referred to in the charge. The accounts of the prisoner allege payment of a certain sum on a certain date into the collectorate, no trace of such amount, having reached that office or the prosecutor, is discernible.

I reject the appeal and confirm the sentence.

PRESENT :

SIR R. BARLOW, BART., AND H. T. RAIKES, Esq., *Judges.*

GOVERNMENT AND NUROHUR SINGH,

versus

Patna. DHUMPUT (No. 1.) GOONDEE (No. 2.) DULA (No. 3.)
AND RONDEE (No. 4.)

1854. CRIME CHARGED.—Theft attended with wilful murder of Pemun Singh.

February 13. Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Case of Tried before Mr. W. Travers, sessions judge of Patna, on the
DHUMPUT and 26th January, 1854.

others. *Remarks by the sessions judge.*—The case is one of theft with wilful murder, in which the opinion of the law officer is at variance with mine.

Four prisoners convicted of theft attended with wilful murder, and sentenced to transportation for life.

It appears that on the night of Saturday the 10th December 1853, the deceased, Pemun Singh, and his brother, the prosecutor, together with the four principal witnesses to the fact, all of whom are *payekasht assamees*, residing in mouzahs Muhapoor and Kowrah, Purgunnah Okree, about a mile from the scene of the murder, were lying out at night in their fields for the purpose of guarding a newly cut crop, which had not yet been stored. About midnight, the prosecutor, Nurohur Singh, who was at a short distance from the spot, awoke from hearing cries and violence and immediately giving them alarm, went in the direction of the noise and there saw and recognized the four defendants, together with six or eight others, beating and maltreating his

brother. The moon being about ten days old and nearly on the meridian, it was almost as easy to see the parties as if it had been day light. Almost simultaneously with the prosecutor, the

1854.

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Case of
Dhumpur and
others.

* No. 1, Bhikarry Singh. witnesses, 1,* 2,† 3‡ and 4,§ arrived at
† No. 2, Sobhun Singh. the spot and likewise saw and recognized
‡ No. 3, Goburdhun Singh. the defendants at a distance of about
§ No. 4, Boolkun Singh. twenty yards (four or five bamboos

length.) They were a party of ten or twelve in number armed with clubs and *lohbundas*, and on being surprised by the prosecutor and witnesses, made off in a northerly direction, taking

|| Witnesses Nos. 1, 2, 3, & 4. with them part of the clothes,|| of the deceased. The defendants are residents

of a village called Hertoo, distant more or less than one mile from the scene of the murder, and taking the direction of their homes, they had to pass by a village, called Boboura Mut, the chowkeedar of which place, witness No.

¶ Joomun Gawalla. 5,¶ being aroused by the noise ran out

and recognized the defendants making off towards their village. They are all of the gwalla caste and known to be men of bad character. Their object was clearly to rob and carry away the newly cut crop, and this might no doubt have been effected to a great extent by so large a body of men, if they had not been interrupted. On the escape of the defendants, the deceased was found quite dead, close to a small grass hut, called a *murka*, which the agricultural classes erect for a night covering. His scull was driven in by the blow of a *lohbunda*, his left leg broken, and other bruises and blows appeared on different parts of his body. The next day the body was removed and on the 12th of December, reached Patna. The evidence of the civil surgeon is conclusive as to the blows having caused death. For the defence, nothing even plausible is brought forward; in fact the witnesses, called by the defendants, disprove their own statements. First, in respect to

the particular plea of the fields of the deceased being adjoining their own,* and further in the existence of any previous ill-will between the parties. No such facts are made out, and the denial of the defendants, that they were related to one another, is also presumptive of evasion and guilt.

* See answer of defendant, No. 13, and witness for defence. No. 2, Bhutton. No. 3, Jugger Muttoo and No. 6, Durbistry Coongia.

tive of evasion and guilt.

The futwa of the law officer is one of acquittal on the grounds of inconsistent evidence, but I find no greater inconsistency, than some slight difference of time as to the arrival of the witnesses at the spot, and the uncertainty of moonlight might fully account for. To my mind, differences of this kind rather strengthen than destroy faith, in oral depositions given by many people.

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Case of
Dhumpur and
others.

My impression about this case is that the defendants came for plunder, and being interrupted by the deceased waking up, they at first endeavoured to silence him by blows. In their first attack, the legs of the deceased being broken, he fell to the ground and then followed the mortal blow on the head. It was probably in the act of falling that he made the exclamation

* Bhikaru Singh. deposed to by witness No. 1.*—This view of the case is strengthened by the evidence of the medical officer, who states his belief of the mortal blow on the head having been given, whilst the deceased was in a recumbent posture, by reason of its extreme severity, his meaning being that in an erect position less resistance would have been opposed to the blow. Finally, when the defendants perceived that a general alarm was given by the prosecutor and witnesses approaching the spot, they gave up all hope of plunder and made off in a body. The charge of murder appears to me established against all four defendants, and that it was most cruel and unprovoked, and done in the prosecution of a felonious purpose, is apparent. But in the absence of proof to premeditated design of taking life, I am averse to recommending capital punishment. Vexation at being discovered, and the excitement of the moment, led to the infliction of severe blows than were probably intended. I would suggest that a sentence of imprisonment for life pass upon all four defendants.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow Baronet and Mr. H. T. Raikes.) The circumstances of the case are fully reported in the sessions judge's reference. The prisoners were known to the witnesses personally; the moon was nearly full and the thieves were recognized in the act in consequence. They were all also immediately named by the prosecutor, in his information at the thannah. We agree with the sessions judge that there are no such inconsistencies in the depositions of the witnesses, as to discredit their evidence on the main facts of the case.

PRESENT:

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND BUREH MAHOMED,

versus

SUEFULLAH (No. 8), SONAULLAH (No. 9), DEBAR (No. 10), KHAPOOSHA (No. 11), SOOKUR MAHOMED (No. 12), KANDOORA (No. 13), PEER MAHOMED (No. 14), DOODOO (No. 15), DUVANOO (No. 16), GOOLLOO (No. 17), AND MUSSUMUT GOOLEE (No. 18.)

Rungpore.

1854.

CRIME CHARGED.—The prisoners Nos. 8 to 17, 1st count, committing a dacoity attended with wounding of Futeh Mahomed Haoranee and Bureh Mahomed, the prosecutor, in his house and plundering therefrom cash and property, value Rs. 319-12 annas. Prisoners Nos. 11, 12, 13 and 15, 2nd count, taking and having possession of property acquired by the above dacoity, knowing it to have been so acquired. Prisoner No. 18, 1st count, being an accessory before and after the fact to the above dacoity; 2nd count, taking and having in possession property acquired by the above dacoity, knowing it to have been so acquired.

February 17.

Case of
SUEFULLAH
and others.

CRIME ESTABLISHED.—Nos. 8 to 17, dacoity attended with wounding and plundering, from the house of the prosecutor, cash and property, value Rs. 319-12, and No. 18, being an accessory before and after the fact to dacoity.

Prisoners convicted of dacoity by the sessions judge acquitted in appeal, the evidence being very insufficient.

Committing Officer.—Mr. A. W. Russel, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, sessions judge of Rungpore, on 30th December 1853.

Remarks by the sessions judge.—This dacoity occurred in the jurisdiction of thannah Durwanea, on the 8th of October 1853, and from the deposition of the prosecutor and evidence of witnesses (1, 2, 3, 4, 5 and 6) the recognition of the prisoners 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 is established. Property proved to be the prosecutor's was found in the possession of prisoners 11, 12 and 18.

I tried the case alone under Act 24 of 1843, and convicted prisoners from 8 to 17 of dacoity and 18 of being an accessory.

Sentence passed by the lower court.—Nos. 8 to 17 each to be imprisoned for ten years, with labor and irons, and No. 18 for one year with labor suitable to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The sessions judge remarks that the recognition of the prisoners Nos. 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, is established on the evidence of the prosecutor and six witnesses,

1854.
February 17.
Case of
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and others.

and property proved to be the prosecutor's found in the possession of 11, 12 and 18. But on turning to the mofussil papers, I find that only the names of three of these men were given to the darogah at first, and the voices of these were said to have been recognized, not their persons. The prosecutor subsequently added the names of as many as 21 persons, but as the darogah did not forward the written depositions of the corroborating witnesses till many days afterwards, I do not consider that evidence altogether trustworthy. The property alluded to, as found in the houses of some of the prisoners, is of the commonest kind, and scarcely susceptible, I should say, of identification.

There are no witnesses entered in the calendar to confessions of the woman.

I do not think the conviction is warranted under these circumstances, the more especially as it is admitted by the prosecutor, who is a village *mohajun*, that all the persons accused by him are his debtors. I acquit the prisoners.

PRESENT:

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND RAMKISHTO SHAM,

versus

BROJORAM DEB ALIAS JADOO DEB.

Sylhet.

1854.
February 17.
Case of
BROJORAM
DEB alias JA-
DOO DEB.

CRIME CHARGED.—Wilful murder of Gobindram Sham.
Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.
Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 21st January, 1854.

Remarks by the sessions judge.—On the 13th of this month, Gobindram Sham, the deceased, cut some bamboos, situated between his house and that of the prisoner, Musst. Doorun, the prisoner's slave, interfered and high words ensued, which the prisoner heard. He rushed up, and after some abusive language had passed between the prisoner and the deceased, the prisoner struck the deceased with a *dao* on the ribs, which felled him to the ground, and while there, he struck him a second blow on the side of the neck, which caused his death.

Prisoner convicted of wilful murder, and sentenced to transportation for life.

There are three eye-witnesses to this transaction, who all agree in having seen the fatal blow given. Jeevaram Deb (No. 1,) declares that the prisoner went into his house and procured the *dao*, with which the murder was committed. Ramdeb (No. 2,) was unable to say when the prisoner armed himself, whilst Mussumut

Doorun (No. 3.) says he brought the *dao* with him when he came to her assistance. 1854.

The prisoner at first denied his guilt, but afterwards made a confession to the darogah, which he repeated to the magistrate that the deceased, one Gobindram and others, had cut down his bamboos, ill-treated Musst. Doorun, his slave, and plundered his house, and that in the struggle that ensued, he killed the deceased. February 17.
Case of
BROJORAM
DEB alias JA-
DOO DEB.

Before this court also he repeated the story and added he did not know what he was doing, when he struck the blows. He called no witnesses to prove his story, but his slave girl, Musst. Doorun (witness No. 3.) has deposed to the truth of it; but the story is unworthy of credit.

The prisoner admits that a quarrel, relative to some bamboos, has for some time existed between himself and the deceased, and though he may have received some provocation, the repetition of the blow with a sharp *dao* weighing $9\frac{1}{2}$ chittacks can leave little doubt but that the homicide was wilful.

The assessors find the prisoner guilty of wilful murder, and in this verdict, I acquiesce, and would beg to recommend that the prisoner be imprisoned for life in transportation beyond seas.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoner no doubt killed the deceased with the *dao*, after having brought him to the ground by a previous blow of the same weapon. I convict him of wilful murder, and, as recommended by the sessions judge, sentence him to be imprisoned for life in transportation beyond sea.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND MUSSUMUT ANUND,

*versus*Dacca. SHEIKH ASHRUFF (No. 23,) AND AFTABOODDEEN
(No. 24.)1854. CRIME CHARGED.—Prisoner No. 23, rape. Prisoner No. 24,
accomplice in the crime.February 22. Committing Officer.—Mr. W. H. Brodhurst, officiating joint-
Case of magistrate of Furreedpore, Dacca.SHEIKH ASHRUFF and another. Tried before Mr. C. T. Davidson, commissioner of Dacca, with
powers of a sessions judge, on the 4th February, 1854.

Remarks by the commissioner.—The prisoner Sheikh Ashruff (No. 23,) is charged with rape. The prisoner Aftabooddeen (No. 24,) with being an accomplice in the said crime, and with accessaryship, both before and after the commission of it. The prosecutrix states that at about mid-day on the 22nd of Jeyt last, she went to the ghaut to bathe, taking with her two little girls, the daughter and niece of Purrummune (witness No. 4,) who said she would follow her. While at the ghaut she was seized by the prisoner No. 23, and dragged into some high grass close by, where the prisoner No. 23, threw her on the ground and had forcible connexion with her, the other prisoner No. 24, holding her down and gagging her the while. That on the witnesses Petumber and Balukchand coming up, the prisoners released her and ran off.

One prisoner convicted of rape on a pregnant woman, and another as an accomplice in the act, sentenced, the former to seven years', and the latter to five years' imprisonment.

The witness Purrummune (No. 4,) states that she requested prosecutrix to take her daughter and niece to the ghaut saying that she would follow, that as she approached the ghaut she saw two Mussulmans carrying off the prosecutrix and being frightened, ran back to her house when she met the witnesses Nos. 1, 2 and 3, and told them what she had seen.

The witnesses Nos. 1, 2 and 3, depose to having met Mussumut Purrummune running from the ghaut in a state of alarm, and heard from her that two men, Mahomedans, had seized prosecutrix and carried her off. They immediately ran to the spot, and Nos. 1 and 2, saw the prisoner No. 23, committing the crime of which he stands charged, and the prisoner No. 24, holding her down. Witness No. 3, was a few paces behind, and did not witness the fact, but saw prosecutrix on the ground with her clothes off her. They all three pursued the prisoners, but did not succeed in capturing them.

The prosecutrix is a married woman of about 20 years of age, living with her husband, and shewn by the evidence to be of

unblemished character. It appears that she was pregnant when the outrage was committed upon her, having given birth to a child fifteen days before the trial. The evidence shews also that both the prisoners are worthless, dissolute characters.

The prisoners deny the charge; No. 23, pleads, 1st, that he and the husband of the prosecutrix are on bad terms, in consequence of the latter not having made and delivered some ornaments, for the manufacture of which he supplied him with gold and silver. The 2nd plea is an *alibi*, viz., that on the day of the occurrence he was at Panchkolah. The pleas are not supported by the witnesses called by the prisoner, and they are contrary to his defence before the magistrate, in which he stated that there was *no* enmity whatever between him and prosecutrix's husband, and that he was at *Metapore*. Prisoner No. 24, pleads an *alibi* also, but he did not urge it in his first answer before the police. In the magistrate's court he stated that he was at the house of Iza-toolah; in his defence before this court, he says that he was at the house of Kurreemooddeen. The three witnesses examined in his behalf do not establish the plea. They are moreover related to him.

The *futwa* of the law officer convicts the prisoner Ashruff No. 23, of having forcible connexion with prosecutrix, and the prisoner Aftabuddeen No. 24, of being an accomplice in the offence. I would convict the prisoner No. 23 of rape, and No. 24, of being an accomplice in the crime, and beg to recommend that the former be sentenced to seven years', and the latter to five years' imprisonment with hard labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The circumstances of this case, and the nature of the evidence adduced in support of it, are fully detailed in the judge's letter of reference. I convict the prisoner, Ashruff, No. 2, of rape on the person of Musst. Anund, and Aftabuddeen, No. 3, of being an accomplice in the same, and, as recommended by the sessions judge, sentence the former to seven and the latter to five years' imprisonment with labor in irons.

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Case of
SHEIKH ASH-
RUFF and an-
other.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT AND MUNOO KHA,

versus

RAMGUTTY MUJOOMDAR (No. 1), AMEEROODEEN
(No. 2), NOYAGAGI (No. 3), RAM DASS DUTT
(No. 4), AMUD ALI (No. 5), MUNOO KHA JEMADAR
(No. 6), AND KURAGAZI (No. 7).

Chittagong.

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February 22. CRIME CHARGED.—1st count, wilful murder of Kala Choka Chukmah; 2nd count, illegally attacking on the river Fenny, the raft of the prosecutor and others, for the purpose of levying an illegal toll, and firing guns loaded with ball and shot at the prosecutor and others, in which the deceased Kala Choka Chukmah was killed and the prosecutor and witnesses Nos. 1, 2, 3, 4 and 5 were wounded.

Case of
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and others.

Seven pri-
soners convicted of aiding and abetting in wilful murder, and sentenced to transportation for life. The prisoners were servants of the Rajah of independent Tipperah, and having demanded toll fired on the deceased, who, with other ryots, was bringing cotton on bamboo rafts down the river Fenny, which separates the Rajah's territory from the Company's.

Committing Officer.—Mr. J. H. Muspratt, magistrate of Chittagong.

Tried before Mr. O. W. Malet, officiating additional sessions judge of Chittagong, on the 13th January, 1854.

Remarks by the officiating additional sessions judge.—The case was first made over to the sessions, on the 31st May 1853, but returned to the magistrate by the sessions judge, for the purpose of obtaining the sanction of Government, for the trial under section 3, Act I. 1849; the shot having been fired, the offence was considered to have been committed in what is generally called a foreign country; the requisite orders having been obtained, the case was again committed to the sessions on the 2nd October, 1853, and has been tried by me with the able assistance of Moulovee Abdool Futteh, the law officer.

The case is committed on 2 counts, 1st charging the parties with wilful murder, 2ndly, with endeavoring to levy an illegal toll and using fire-arms, by which several people were wounded and one killed.

On the 21st Phalgun 1211 m. 10th March, 1852, the individual prosecutor and others, were bringing down cotton on bamboo rafts by the river Fenny, which at this part divides the territory of independent Tipperah from our provinces; on their arrival at a place called "Kila ghat" where a chokee has been established on the part of the Rajah of Tipperah at the limit of his property; they were hailed by defendant No. 1, and directed to come and pay toll.

They refused to do so, when they were fired upon by defendant No. 1, and others, besides being pelted with brick-bats and bamboos; one of their party Kala Chuckmah was killed by a shot,

said to have been fired by defendant No. 1, who also was the person that gave the orders; prosecutor himself and several of the witnesses were struck by the shot fired by the other defendants.

The witnesses for the prosecution state, that defendant No. 1, first called to them to stop and pay the toll, and on their refusing he called out to his men to fire (*golee maro*) then stepped forward and deliberately fired, and by this shot Kala Chuckmah fell, and died in a very few minutes, having been struck just under the chest. Immediately on defendant No. 1, firing, the other defendants also fired some four or five shots; it is not distinctly said who; by this five, witnesses 1, 2, 3, 4 and 5 were wounded, and at the time of their giving evidence before me, each of those named had the marks of, or the pellets lodged in different parts of their bodies, but only just underneath the skin. They mentioned that they were proceeding in so large a body, as some cotton belonging to one Bund Ali had been plundered but a short time previously. Other evidence shews that the body was taken to the thannah, the usual inquest held, and then sent in to the sudder station to be examined by the medical officer.

This man's evidence, if taken alone, would almost shew that the wound could not have been the cause of death (and though it is not noted in his written evidence, he said it was a matter of opinion, which opinion he was unwilling to give). He describes the wound as only $\frac{1}{2}$ of an inch in diameter, and as being a gun shot wound in an oblique direction, not injuring any vital organ; he made a very minute examination, but it was not so satisfactory as he could have wished, owing to the state of decomposition in which the body was, by which also he was prevented from ascertaining whether there could have been any other cause of death, he can state positively that it was a gun-shot wound, and inflicted during the life of the deceased.

The other witnesses who speak on this subject, one of whom was the only man that had courage to go to his assistance, state that up to the time of firing the shot the man was in good health, that a quantity of blood came from the wound, and that he then and there died from its effects.

The defendants profess ignorance of the whole affair, they were none of them by their own accounts at Kila Ghat at the time mentioned, and endeavor by implication, rather than assertion, to shew that the deceased was killed in an affray which took place (as they allege) between these parties and some of the Rajah's people higher up the river, referring to an enquiry held by another darogah, and bringing witnesses to prove their respective *alibis*.

Defendant No. 1, states that he was at the time at another place, employed in collecting revenue, stating the sum that he had

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collected, and alleges the enmity of the plaintiffs, as the motive for their making him the defendant, a point entirely without proof from the evidence; the natural course for a man making this statement, would have been to have shewn his papers, but he has none, and on my offering to send for them, he stated that as his house had been searched by the police, they could not be found, instead of bringing forward respectable witnesses which, had his tale been true, he would of course have had no difficulty in doing, he is only spoken for by five men of a very inferior class; with the exception of one man, I cannot credit them,

Defendant No. 2, states himself to have been employed at a ferry, but his own witnesses contradict him as to the duration of time, that he was there, and the nature of his employment. He states that he supervised, while a gomashtha wrote, and one of the witnesses states that the defendant himself wrote.

Defendant No. 3, mentions as the prosecutor's motive for making him a defendant, that he was about to give exculpatory evidence in another case, in opposition to the prosecutor; on being asked for whom he was to give evidence, and the nature of it, he could give no explanation. He further stated that at the time mentioned, he went to some distance from his home to buy a cow, one of his witnesses could not mention when it was the cow was bought, and the others on being asked what they could say in his exculpation, without preamble or being able to say *why* it should exculpate him, at once brought forward the same story and though the transaction was said to have been done at some distance, they were all his own village people, and not entitled to credit without further corroboration.

Defendant No. 4, states himself to have been told by a certain person to leave one place he was at, on account of the dangers that might ensue to him from the affray above referred to, of which by his account he could just hear the sound of guns; this person, his principal witness, denies ever having given the advice stated.

Defendant No. 5, tells a rather well connected story of his going to see a relation, and mentions his having been accompanied by three persons, each of whom in giving his evidence says that he was the first to join the defendant, thus all contradicting each other.

Defendant No. 6, states himself to be a subject of the rajah, but this is contradicted by his own witnesses, the evidence as to his *alibi* is too undeterminate to invalidate that of the prosecution.

Defendant No. 7, states that he went to see a sick sister; his evidence is well got up, but though they told their story well, they could not, with one exception, say why they mentioned this particular time and occurrence, as likely to clear him, thus leading to the inference that they had been tutored.

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I now proceed to give my opinion on the case. With regard to the evidence for the prosecution in general, I must say that there is present a great deal of discrepancy, but still it is a discrepancy which refers to the circumstances of the case, and not to the facts. They all speak positively to the facts, first, that defendant No. 1, called to them to pay the illegal toll; second that it was he that fired the fatal shot; third, that deceased died in consequence of that shot; fourth, that the other defendants were present aiding and abetting; fifth, that some of them also fired.

What they differ in are unimportant points and on which in the flurry of the affray, they might well be uncertain, such as the dress worn by defendant No. 1, the exact place that he shot from, whether it was a flint-gun or a matchlock that was used by him, the position in which the deceased was when shot, how the body was taken to thannah, &c.; the evidence given before me also differs in the same way in unimportant particulars from that given before the magistrate, but not enough to shake the general credibility of it. In one instance, I, at first, thought that the evidence of No. 13, would be inadmissible. On cross-examination, it came out, that he had seen the beginning of the business, (which was continued some way down the river) had stopped while they went on, and had then again run forward, so that of course, to him it was as it were two distinct occurrences, at two different places, and two different times.

With regard to the surgical evidence, it merely proves that there was a gun shot wound of a certain size inflicted during the life of the deceased, but though the surgeon states that no vital organ was injured, he also mentioned, though it is not entered as evidence, had the deceased lived for some time after the infliction of the wound, that it would have shewn a different appearance from that he found it to do, and as far as he could see (the body being in a state of decomposition) there was no other cause for death.

I have no reason for wishing that the defendant should not have the benefit of this doubt, were there any in my own mind, but I have none. It is notorious that a native will die from the mere shock of a wound, though not of a lethal character. I have myself seen a patient die under a surgical operation, merely the cutting off a leg, when the surgeon assured me, that the man, to use his words, ought not to have died, and I have been told by other medical men that such instances are of frequent occurrence; the whole of the other evidence, on this particular point, shews that the gun-shot was the cause of death, and the manner of it is well described by witness No. 5.

All tolls on this river have been declared illegal.

The law officer has given his *futwa* that the parties are guilty of culpable homicide, but does not consider the evidence

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against No. 1, sufficiently clear to make him more criminal than the others. On this point I disagree with him, and as I do so, the case is referred to the Sudder Court.

Taking all the evidence into consideration, I am of opinion that the discrepancies in that for the prosecution are immaterial to the points at issue, and no more than might be expected from persons speaking of what they saw, under the influence of alarm, and smarting from wounds; indeed this very discrepancy in some measure proves the truth of their assertion, as it shews there could have been no concert in getting up the evidence; the defence I consider an entire failure.

It has been ruled in English law "that a person discharging a loaded gun amongst a multitude of people, it is murder, for the law will imply malice," 1 Hale, 475, vide Archbald, p. 422; from the reports of the Nizamut Adawlut, it does not appear that this extreme view has been taken in this country. It is also a maxim of law that "aiding and abetting by being present" are to be considered as principals in the second degree, vide Tomlin.

Taking therefore the law and the facts into consideration, I am of opinion that defendant No. 1, fired the shot, which caused the death of Kali Choka Chuckmah, and having done so, is guilty of aggravated culpable homicide. I find the other defendants as having been there and then present aiding and abetting, guilty also as principals in the second degree, and I find all the defendants guilty on the 2nd count of the indictment, viz. of endeavoring to exact an illegal toll and firing guns loaded with shot at the prosecutor and others, from which one person was killed and others wounded.

I recommend that defendant No. 1, be imprisoned with labor and irons for life, and the other defendants 2, 3, 4, 5, 6 and 7, with labor in irons for fourteen years each.

The magisterial conduct of the case calls for no remark, except that a second enquiry, made at the instance of the sessions judge, should have been mentioned as unworthy of credit, and the extremely meagre sooruthall sent up by the darogah in the first instance, should have been noticed.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Baronet.) The law officer and officiating additional sessions judge, convict all the prisoners, but the former does not think the criminality of the prisoner No. 1, greater than that of the others; the judge on the contrary deems him guilty of *aggravated* culpable homicide and proposes to sentence him to imprisonment for life, while he convicts the other prisoners of aiding and abetting and recommends imprisonment for fourteen years in their case.

There are, the judge states, some discrepancies in the evidence for the prosecution, but in my opinion they are not such as to deprive the evidence in the main of credit. Some of the witnesses

were in the habit of crossing the river and carried on trade on the other side; others recognized the prisoners before the occurrence, and all the prisoners have been named by from 3 to 7 of them. The witnesses adduced for the defence, which in every case is *alibi*, speak as usual in general terms in support of the plea, but it is clear that no weight can be attached to their statements, which were not believed by the authorities presiding at the sessions. The principal prisoner No. 1, endeavours to establish *alibi* by the evidence of a *chatta*-bearer, a *dhobee* and a peon who for four days followed him to the house of a namesake, where two other witnesses are found to support the defence. By the evidence on the record, he appears to be the headman at the ghaut on the northside of the Fenny, on the part of the Rajah of Tipperah, and if full reliance could be placed on the evidence as to the extent of his participation in the assault, the sentence proposed to be passed upon him would be very insufficient. I entirely differ from the officiating additional sessions judge, as to the extent of the criminality of the prisoners in this case. It is clearly one of wilful murder. The deceased Kala Choka was killed on the spot, by a ball from the gun of one of the people at the ghaut (if not fired by No. 1, himself.) Several other discharges were then made, and five persons on the raft were also wounded with small shot. It is difficult to say exactly what part each of the prisoners took; but if the evidence be good against them, and I see no reason to differ from the judge and the law officer on that point, it establishes the fact that unoffending and unarmed ryots who were going down the river, were deliberately shot at, and one person from a distance of fifteen yards killed by the prisoners from the north side of the Fenny river, who demanded duty from them, and on their refusal to pay, committed this assault which was as cowardly as it was cruel and unwarrantable.

I convict all the prisoners of aiding and abetting in wilful murder, and sentence them to imprisonment in transportation for life.

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PRESENT :

A. DICK, Esq., *Judge*.

GOVERNMENT AND BHOWANNEE BHUGGUT,

versus

Bhaugulpore. BOOLLOO (No. 2), HAREE (No. 3; APPELLANT), RUTTUN (No. 4), MUNOONGEE (No. 5), AND KULRA (No. 6).

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Case of
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others.

Four prisoners convicted of burglary and a fifth as a receiver. Sentenced to different terms of imprisonment, with reference to their previous characters. Appeal rejected.

CRIME CHARGED.—1st count, burglary by breaking lock and theft of property valued at rupees 5-8 ; 2nd count, receiving and possessing stolen property, knowing at the time of receiving it, that it had been obtained by burglary and theft.

CRIME ESTABLISHED.—Prisoners Nos. 2, 3, 4 and 6, burglary by breaking lock and theft of property valued at Rs. 5-8, Prisoner No. 5 receiving and possessing stolen property, knowing at the time of receiving it, that it had been obtained by burglary and theft.

Committing Officer.—Mr. R. O. Heywood, magistrate of Bhaugulpore,

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 17th November, 1853.

Remarks by the sessions judge.—Boolloo No. 2, pleads guilty of burglary and theft, the other prisoners plead *not guilty* of the charges brought against them.

Prosecutor going early in the morning to his cow-house, in which was also his granary, found the door thrown down, the padlock being broken and two bags of *urhur* grain, all there was in the golah, missing. There were traces of strewn grain up to the doors of Munoongee and the other prisoners. Seeing this, prosecutor gave notice at the Umerpore thannah close by, accusing all the prisoners (and one Zuhoree released by the magistrate) and stating his loss to be three and half maunds of grain. Their houses were searched and three maunds of grain discovered, viz.; In Boolloo's house (No. 2), twenty-two seers. In Haree's (No. 3), twenty-two seers. In Ruttun's (No. 4), twenty-two seers. In Munoongee's (No. 5), twenty-three seers, and an iron hinge sworn to by prosecutor as belonging to the broken door of his granary. In Kulra's (No. 6), eleven seers.

These facts are proved by evidence of prosecutor and witnesses Nos. 1 and 2.

The prisoners all confessed before the magistrate and at the thannah ; their confessions are clear, Nos. 2, 3, 4 and 6, admit the burglary and theft. No. 5, Munoongee said he saw the prisoners sitting together dividing the spoil, and that they gave him a share to secure his secrecy. The iron hinge, he said, he found in a field near prosecutor's house. Their confessions are

duly deposed to on oath before this court, by the attesting witnesses Nos. 7 and 8.

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others.

Before this court Booloo, prisoner No. 2, confesses without reservation. Haree No. 3, says that he has been taken up, because of his former bad character, he denies the confessions before magistrate and at thannah. Ruttun No. 4, admits the former confessions. Munoongee No. 5, says he saw Ruttun's wife roasting some of the grain and asked what she was doing, when Ruttun said he had stolen the grain and insisted on throwing a bag into his (Munoongee's) house, in which was also the iron hinge. Kulra No. 6, admits the former confessions, says he was forced to that at the thannah, but made that before the magistrate willingly. Munoongee No. 5, alone brings witnesses as to character: Nos. 10, 11, 12, 13 and 14, all speak to his respectability, prior to this event.

The jury bring in a verdict of guilty against prisoners Nos. 2, 3, 4 and 6 on the first count of the charge and against No. 5, on the second count. In all of which I concur.

Prisoners Booloo, Haree, Ruttun and Kulra, convicted on their own confessions, are found guilty of burglary and theft of property valued at Rs. 5-8. Booloo and Kulra, this appearing to be their first offence, are sentenced to one years' imprisonment with labor in irons. Prisoners Haree and Ruttun being old offenders,—Haree having been released some ten years from fourteen years' imprisonment for dacoity, and Ruttun having been imprisoned twice before for theft, once two years, and once six months, both with labor in irons, first in the year 1850, and again in April of the present year,—are sentenced to imprisonment for seven years with labor in irons.

Munoongee prisoner, convicted on his own confessions and the concurrent testimony of witnesses, is found guilty of receiving and possessing stolen property, knowing it to be stolen, and sentenced to one year's imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick). The petitioner Haree, confessed in the mofussil, and before the magistrate; and part of the property stolen was found in his house. He admits he is an old offender, and suffered for his offence, and therefore should not be again a sufferer on account of it. He only suffers on that account because he has *again* offended. The Court see no reason for interference.

PRESENT :

A. DICK, Esq., *Judge.*

GOVERNMENT AND NARAIN BERA,

*versus*RADHANATH MANA (No. 3,) AND MUSST. URNO (No. 4,
APPELLANT.)

Midnapore. 1854. CRIME CHARGED.—Prisoner No. 3, 1st count, theft in having opened the box of the prosecutor's master and stolen therefrom property in rupees and Bank Notes to the value of Rs. 501-8; February 23. 2nd count, having in his possession stolen property, knowing it Case of Musst. URNO to have been stolen. Prisoner No. 4, 1st count, accessory after and another. the fact in having in her possession stolen property, knowing the same to have been stolen; 2nd count, privy to the aforesaid theft and knowingly and fraudulently concealing the same.

One prisoner convicted of theft of his master's property and sentenced to five years' imprisonment. The other prisoner a prostitute with whom he had consorted after the theft, convicted as an accessory after the fact, and sentenced to two years' imprisonment. CRIME ESTABLISHED.—Prisoner No. 3, theft, prisoner No. 4, accessory after the fact in having stolen property, knowing it to be such, in her possession, and privy to the theft, and fraudulently concealing it.

Committing Officer.—Mr. G. Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 23rd December, 1853. *

Remarks by the sessions judge.—The prisoners plead not guilty. It is in evidence that on the 21st September, Rajnarain Dutt, a vakeel of the civil court, was robbed of cash to the value of Co.'s Rs. 501-8. The money was deposited in a box, which was kept in an upper room of his lodging in the town of Midnapore, and the key of it was usually put under the corner of a carpet, on which Rajnarain sat. This key was not forthcoming on Wednesday, the 21st September, when required; search was made for it and it was found wrapped up in a piece of paper in a hole in the wall. This circumstance, added to that of the prisoner Radhanath having suddenly absconded from Rajnarain's service, where he officiated as khansamah, excited suspicion, and the box aforesaid of which he had the custody was opened, when the discovery was made that the money Rs. 501-8 had been stolen. Intimation was immediately given to the police, but no clue was obtained till the 2nd of October following. On that day Rajnarain accompanied by his servants (the witness, Bheem Roy, No. 9, and others) was proceeding to his home in Jessore, and reached the village of Bheera Bera, on the road to Calcutta in the Howrah jurisdiction, on the 2nd October, where he put up for the night. He there obtained tidings that one Radhanath had been residing in the village for some days in the house of

a prostitute, the prisoner Urno, and had been so lavish of his money as to create a sensation amongst the inhabitants, who were unaccustomed to see such profuse expenditure by persons in the humbler walks of life. Rajnarain, conceiving that the man must be identical with Radhanath, his run-away servant, sent Bheem Roy to inform the chowkedar. These two then went to the house of the prisoner Urno, where they found the prisoner Radhanath, who immediately confessed that he had robbed his master at the instigation of other lodgers.

He then desired the prisoner Urno, to give up the stolen property, and she then produced from her box, a bag containing two bank notes and 43 rupees in silver, which Radhanath had desired her to keep for him. She likewise produced sundry pieces of cloth and 14 rupees which he had given her as presents. The prisoners repeated their confessions before the magistrate, and they are fully corroborated by the evidence in this court. The prisoner Urno, pleads that she was ignorant the prisoner Radhanath, had acquired the property he entrusted to her keeping by theft, but both the prisoners in their confessions admit that they were previously acquainted with each other, when he (Radhanath) was a peadah in the service of the jemadar of the village in which they were arrested. Urno was therefore well aware what were her paramour's circumstances, and when she saw so much money in his possession and that he so lavishly expended it, it is obvious her suspicions must have been excited, and it is improbable he would have resided in her house a week, as he appears to have done, without her discovering how and where he got it. There can be no reasonable doubt that she took the property into her custody, knowing it to have been stolen and that she concealed the fact from the police till concealment was no longer possible. The assessors declare the prisoner Radhanath, guilty of the first charge, and the prisoner Urno, guilty of the 1st and 2nd counts of 2nd charge. I concur in this finding, and sentence them accordingly, as recorded in the statement.

Sentence passed by the lower court.—Prisoner No. 3, five years' imprisonment with labor in irons, and prisoner No. 4, to two (2) years' imprisonment with labor suitable to her sex.

Remarks by the Nizamut Adawlat.—(Present: Mr. A. Dick). The Court see no reason for interference with the sentence passed on the prisoner Urno.

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Case of
Musst. URNO
and another.

PRESENT :

B. J. COLVIN, Esq. *Officiating Judge.*

SHEIKH DAOOD ULLEE, SERVANT OF LAL RUNDWAN SINGH, AND GOVERNMENT,

versus

Bhaugulpore.

BHYRO HAREE.

1854.

February 24.

Case of
BHYRO HAREE.

Prisoner convicted of receiving stolen property, and sentenced to five years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, theft of property, valued at Co.'s Rs. 982-10, belonging to the prosecutor's master; 2nd count, having in his possession stolen property, knowing at the time the same to have been obtained by theft.

CRIME ESTABLISHED.—Having in his possession stolen property, knowing at the time the same to have been obtained by theft.

Committing Officer.—Mr. W. T. Tucker, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 31st October, 1853.

Remarks by the sessions judge.—Prisoner pleads *not guilty*.

Prosecutor is servant of Lal Rundawan Singh, in whose house the robbery took place. It seems that his master first raised an alarm of thieves on the night in question; that prosecutor and other fellow servants, witnesses, Nos. 7, 8 and 9, were sleeping in the outer verandah, when they were roused by their master's voice and all running to the interior, found a shutter broken open and a chowkedar, by name Ramdyal, standing within the house by the open window (the case of this Ramdyal is still under investigation,) this happened on the 30th of August, but it was not till the 27th of September, that any clue was obtained towards finding the property, now produced in court, and criminalizing prisoner with regard to it. It appears that pending the investigation on the spot witnesses, Nos. 5, 10 and 17, heard a conversation between prisoner and some others, regarding removing the property to some safer place. The houses of all these were searched, and the property produced in court found buried in Bhyro prisoner's house, knee-deep under the floor, the spot being pointed out by Bhyro himself. Nothing was found in the houses of the others, and they were released by the magistrate. The property found, consisting of the largest size *thalees*, called *purat*, brass drinking cups and bowls, rich silk dresses and jewelled gold ornaments are fully identified, and agree with the list of property furnished by the plaintiff, on the 3rd of September.

Prisoner calls no witnesses and makes no defence beyond asserting, that he did not know of the property being concealed in

his house, did not place it there, and did not point it out to the searching party. 1854.

The jury find prisoner guilty on the 2nd count of the indictment, in which I concur. Bhyro Haree is found guilty of having in his possession stolen property, knowing the same to be stolen, and sentenced to five years' imprisonment with labor in irons and to pay a fine of Rs. 927-10, under Act 16, of 1850. February 24.
Case of
BHYRO HAREE.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The prisoner acknowledged at the thannah and before the magistrate, that the property was found in his house, having been placed there by other persons. Before the sessions judge he said the prosecutor had put it there. This is not likely, for in such case the prosecutor must have found his property to have been able to do so; and it is seen that the articles discovered in prisoner's house were in the list, made out of those stolen, when the theft was first reported. Nothing has been urged in appeal, but denial of guilt. I confirm the finding and sentence.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

KISTOLOLL DUTT.

Rajshahye.

CRIME CHARGED.—1st count, stealing 1,063 rupees from a box in the house of Rajnarayun Chowdree, belonging as under:—603 rupees to Rajnarayun Chowdree, and 460 rupees deposited with him by Bowanny Shurn Khan; 2nd count, knowingly taking and being in possession of the above stolen rupees. 1854.

CRIME ESTABLISHED.—Being an accomplice in stealing from the house of Rajnarayun Chowdree rupees 595 his property. February 24.

Committing Officer.—Mr. J. C. Dodgson, magistrate of Rajshahye. Case of
KISTOLOLL DUTT.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 7th December, 1853. Stolen property should not be restored before trial in the sessions court.

Remarks by the sessions judge.—This was a heavy case of theft at the sudder station, and the prisoner, it will be seen, is charged with stealing money, belonging to two persons. The Government was made prosecutor, but on behalf of Bhowanny Shurn Khan no one appeared. The money in two bags was taken from a box in the house of Rajnarayun Chowdree, an officer in the abkaree department, and the prisoner with one bag under his arm was apprehended two nights after, by witness

1854.

February 24.
Case of
KISTOLOLL
DUTT.

No. 1, and when the money was counted at the thannah 577 rupees were found in the bag. Eighteen rupees were also found in a purse on the prisoner, and there were besides, several articles, which the prisoner had purchased of a trader for rupees 6-4. The bag was fully recognized as Rajnarayun's. There was a thannah confession; but the prisoner although admitting the signature to be his, denied making the statement it contained. The darogah and mohurir were therefore sent for, and deposed that the confession was taken down by a *taid-navees* in their presence and was voluntarily made by the prisoner. When called upon for his defence, he denied committing the theft, or making any confession: he had no witnesses. Having explained to the law officer, that I considered there was no proof of any money of Bhowanny Shurn's being stolen, as the statement made by witness No. 9, was unsupported, and neither Bhowanny Shurn nor any one on his behalf had complained, I directed him to give his futwa. This convicts the prisoner of the theft of 595 rupees (the amount found on him) belonging to Rajnarayun Chowdree, and, concurring in the futwa, I have sentenced him to four years' imprisonment with labor and irons. I must mention that before the trial, or when the commitment was made, the magistrate handed over the money together with 7 rupees 4 annas, obtained from the trader, to Rajnarayun. He was accordingly informed that this was improper, and he had no authority to do so. In fact, it was prejudging a nice case as to the ownership of the money. I also insisted on Rajnarayun (who admitted receiving back the money) paying 30 rupees to witness No. 1, as he had apprehended the thief with the money on him.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The prisoner was named as soon as the theft was discovered. Two days afterwards, he was apprehended with a bag (recognised as prosecutor's) full of rupees. The prisoner only urges in appeal that the case has been got up against him, but there is no proof of this. I, therefore, uphold the conviction and sentence.

The magistrate should not have delivered the money to the prosecutor before trial. His attention should likewise be drawn to construction 604.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

MUNGER.

Patna.

1854.

February 24.

Case of
MUNGER.

The prisoner
was acquitted
of perjury, his
depositions
having been
informally re-
corded.

CRIME CHARGED.—Perjury in having on the 24th November, 1853, or 9th Aughun, 1261, F. S. intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the magistrate of the city of Patna, “that he saw Tika strike his father with a sword,” and in having again on the 26th November, 1853, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the said magistrate of the city of Patna, that I did not see him strike him (i. e. his father), such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury in having on the 24th November, 1853, or 9th Aughun, 1261, F. S. intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the magistrate of the city of Patna, “that he saw Tika strike his father with a sword,” and in having again on the 26th November, 1853, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the said magistrate of the city of Patna that I did not see him strike him (i. e. his father), such statements being contradictory of each other on a point material to the issue of the case.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 21st December, 1853.

Remarks by the sessions judge.—The defendant in this case was a witness in a case of riotous assault and wounding, namely Government and Tika and others, versus Munger and others, one person was wounded, namely, Boodhoo, the father of Tika, on the 24th of November, 1853. The defendant as witness for Munger stated, that Tika wounded his own father Boodhoo for the purpose of making the charge appear more grave and important against Munger, and the other defendants. On the 26th of November, the defendant denied that Tika wounded Boodhoo. On the 12th December following, the defendant, in his answer to the charge of perjury, admitted that Munger and another person had instigated him to give his first deposition, in order to make the charge fall more heavily on Tika, but that in reality he had not seen him strike the wounded man Boodhoo. I convict the defendant of perjury and the futwa of the law officer coincides with this judgment. He is accordingly sentenced to three years' imprisonment with labor in irons.

1854. *Remarks by the Nizamut Adawlut.*—(Present: Mr. B. J. Colvin). I find that the deposition of the accused, recorded on the 26th November, was never signed by him; and there is nothing to shew that that recorded on the 24th was duly certified by the magistrate, as his signature is only attached to the deposition of the 26th. There is nothing, therefore, to show that

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Case of
MUNGER.

* See the case of Government versus Juldhur Moodkee. Nizamut Reports Vol. 5, page 70.

the deposition of the 24th was recorded before an officer with power to administer an oath.* A charge of perjury cannot be based on depositions so informally recorded.

I acquit and direct the release of the prisoner.

It is observed that the sessions judge has not transferred the depositions of 24th and 26th November to the record of trial, as he should have done by paragraph 6, Circular Order No. 54, 16th July, 1830.

PRESENT:

A. DICK, Esq., *Judge.*
B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

Rajshahye. NETTOO AURUT (No. 106,) AND MOOCHAI SHEIKH (No. 107.)

1854. CRIME CHARGED.—Prisoner, No. 106, wilful murder of Khoodee Chokree, on the 28th October, 1853, corresponding with the 13th Kartick, 1260, B. S. prisoner No. 107, accessory to the murder of Khoodee Chokree after the fact.

February 24.
Case of
NETTOO AURUT.

Committing Officer.—Mr. F. S. Davis, officiating joint-magistrate of Pubnah.

Held that the prisoner acquitted was correctly committed as an accessory after the fact, having in his answer tried to shield the prisoner convicted.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 31st January, 1854.

Remarks by the sessions judge.—The reason of this reference is, that the law officer in his futwa acquits both prisoners, holding there is no proof against the female prisoner, while, in my opinion, there is the clearest and most direct proof that she struck and threw down the child, and who almost immediately after died, and on a *post mortem* examination of the body, it was proved that her death was caused by violence.

Witnesses, Nos. 1, 2, 3 and 4, depose to seeing the prisoner, No. 106, strike the deceased with a wooden peg used to tether a goat, when the child fell down against a *pucka* flight of steps, and was taken up senseless by the prisoner No. 107, her father, who abused the woman, and took the child into his house. The

woman, however, tried to get the child to drink some water. The reason she struck her was, because the child refused to go and fetch the goat, and the prisoner had in consequence to go herself.

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Case of
NETTOO AU-
RUT.

Witness No. 8, the chowkeedar, on hearing of the child's death, reported the circumstance at the *ghattee*, when an enquiry

* Witness Zuheeruddeen was held by an acting *mohurir*,* who Mahomed.

seemed to have very little knowledge of his duties as a police officer, as none of the witnesses to the *sooruthall* were shown the body, though they attested the paper called "*sooruthallash*." Witness No. 5, the native doctor, then in charge of the jail hospital, during the absence on leave of the sub-assistant surgeon, and educated at the medical college, deposed there were marks on the neck, and the tongue was protruding out, one rib on the right side was broken and forced into the lungs, and the skull, over the temple, fractured, and a part of the bone driven into the brain. All these three appearances were sufficient to account for the child's death.

As no mark on the neck was seen by the acting *mohurir*, it is probable that when sending in the body, some rope tied round the mat, must have pressed against this part and left the mark. There can however be no doubt, from the native doctor's deposition, that both the other wounds (and the *consequences* resulting therefrom) were inflicted while the child was alive, and that though the blow on the temple may have been caused from the child falling against the *pucka* steps, the blow the prisoner had before given her, knocked the child down, and caused her to fall against them.

If any further proof was necessary, the fact of the woman having run away so immediately after, and the statement made by her to the police, when she was caught (in the house of a prostitute) as to the cause of the child's death are quite conclusive.

I do not think there was any *intention* on her part to kill the child, but the assault was a brutal one, and as the prisoner was only a concubine of the child's father, she surely had no right to resent her conduct as she did in his presence.

I therefore beg to propose that the *futwa* be set aside, and the prisoner be convicted of culpable homicide and sentenced to three years' imprisonment, and to pay a fine of 50 rupees, or to labor suitable to her sex.

The other prisoner, agreeably to the *futwa*, has been acquitted. There is no proof of his having touched the child (his own by a wife) before she fell down. I suppose he was committed as an accessory *after the fact*, because he allowed the woman to escape. But it may be asked, had he any right to detain her, or was he aware, she meant to run away? He was placed on the horns of a *dilemma*, for if he had detained her *in his house*, he might

1854. have been accused, under the now almost obsolete law, of harbouring a felon, and thus made an accessory after the fact. I
 February 24. hardly think the evidence warranted his commitment, or that it
 Case of was a judicious step. This prisoner has been released, the other
 Nettoo A- is in jail.
 RUT.

The case referred to by the female prisoner in her petition, regarding the dispute to the house in which they lived, is also submitted, but it was evidently one between the *ex* and *new* go-mashtah of the indigo factory, and when this homicide occurred, no dispute existed at all, either as to the right to or possession of the house.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin). The moofttee, it appears on perusal of his *futwa*, acquits the female prisoner, Nettoo, on account of various discrepancies in the depositions of the eye-witnesses to the crime. We do not, however, find the discrepancies of such a nature as to render their evidence untrustworthy on the main fact, the striking of the deceased child by Nettoo, and the *post mortem* examination by the medical officer corroborates strongly the truth of their evidence in that respect. We, therefore, convict the female prisoner, Nettoo, of culpable homicide in concurrence with the sessions judge, and sentence her as recommended by him. We observe that the officiating joint-magistrate was justified in committing the male prisoner, as an accessory after the fact; as by his answer before the police in the mofussil, and also before himself in the foudary, the said prisoner attempted to shield the real criminal, the *female* prisoner.

PRESENT:

A. DICK, Esq., *Judge*.
B. J. COLVIN, Esq., *Officiating Judge*.

GOVERNMENT ON THE PROSECUTION OF HURROW
RAUR,

versus

KHEDUN SHAHA HOLUYE REWREEWALLAH (No. 1),
GEEREEDHAREE HOLUYE REWREEWALLAH
(No. 2), RAMBHUJOO HOLUYE (No. 3), AND AUNUND
RAUR (No. 4.) 2½ Pergunnahs.

CRIME CHARGED.—1st count Nos. 1 and 2, theft of property valued at Rs. 449-12 belonging to the prosecutrix Hurrow Raur; 2nd count, No. 3, receiving the stolen property, knowing it to have been such; 3rd count No. 4, being accessory before and after its perpetration to the crime enumerated in the 1st count. 1854.

Committing Officer.—Mr. E. A. Samuels, magistrate of the 2½ Pergunnahs. February 24.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs on the 11th February, 1854.

Remarks by the officiating additional sessions judge.—The robbery, with which the prisoners are charged, appears to have been planned for some time and the circumstances of the prosecutrix and her possession of the gold and silver ornaments and property in general, known to the prisoners Khedun, Geereedharee and Anund, who were her close neighbours. Her statement is, that she left home in the forenoon locking the door of her house, and on her return found that the lock had been forced, her trunk broken open and all her valuables removed. On enquiring from her son, a boy of about eight years old, whom she had left behind on her departure, how the robbery had been committed, she was informed that he could not tell as the prisoner Anund had sent him to the bazar. She estimates her loss at about 450 rupees, but admits having recovered all the jewels, and the two bank notes of 100 Rs. each, the missing articles being three notes of hand amounting to 225 rupees and a bag of pice. Her suspicions immediately fell on her neighbours, and she had the abovenamed prisoners arrested by the police. They all made admissions of a criminatory nature, and on those admissions the prisoner Rambhujoo Holuye was taken up. He acknowledged having received the ornaments from the prisoner Khedun Shaha, who deposited them on the alleged plea of his being about to perform a pilgrimage and produced them from under some firewood in his cooking shed, where they were care- The circumstances of the case warranted the prisoner's conviction on the charge of guilty receipt of stolen property.

1854. fully concealed. On the arrest of the prisoner Khedun Shaha, the witness Pursun Das made over to the police two bank notes of 100 Rs. each, on the advice of his master, to whom he disclosed that the prisoner had consigned them to his care from fear of their being torn or otherwise injured by his infant son. Case of KHEDUN SHAHA HOLUYE REWREE-WALLAH and others. * Witnesses Nos. 14, 15. The finding of the property in the possession of the prisoner Rambhujee will be proved by the witnesses enumerated in the margin,* as also the identity of that property and the delivery of the two notes to the police, as received from the prisoner Khedun Shaha.

As there is some confusion in the evidence, regarding the moufussil confession of the prisoners Khedun, Rambhujoo and Anund, I have rejected the records and excluded them from the trial. I have however admitted the confession of the prisoner Geereed-

† Witnesses Nos. 7, & 8. dhari, which will be found attested by the witnesses noticed in the margin.†

‡ Witnesses Nos. 10, 11, 12, 13. The parties marginally‡ indicated will establish the record of the confession of all the prisoners before the magistrate.

The purport of the foudary confession of the prisoner Khedun Shaha is, that he witnessed the robbery and from conscientious motives and a desire to further the ends of justice, deprived the thieves of the plunder and deposited it with the prisoner Rambhujoo Holuye and the witness Pursun Das, with whom he is on terms of intimacy; that of the prisoner Geereedharce Holuye amounts to a guilty knowledge of the theft and presence during its commission, denying complicity; that of the prisoner Rambhujee to receiving and having in possession, repudiating guilty knowledge, and that of the prisoner Anund Raur to privy.

The three male prisoners, in effect, repeat on the trial the defence made by them in the lower court, acknowledging the part severally taken by them in the affair, but repudiating all felonious or fraudulent intent. The female prisoner, Anund Raur, denies the charge and asserts her innocence, calling witnesses to prove that she bears a good character. The two witnesses examined on her behalf, do not prove the plea advanced.

The *futwa* of the law officer convicts the prisoner Khedun Shaha, No. 1, of the theft charged; the prisoner Geereedharce Holuye, No. 2, of privy to the same, both before and after the fact and the prisoner Anund Raur, No. 4, of privy after the fact, and declares them liable to discretionary punishment by *tazeer* according to their respective degrees of criminality. It acquits the prisoner Rambhujoo Holuye, No. 3, holding him harmless of any criminal offence.

This finding as regards the convicted prisoners is not inconsistent with the evidence adduced on the trial, and I generally concur in it, but I utterly dissent from the verdict as respects

the prisoner Rambhujee Holuye, No. 3, whose criminality and guilt are to my mind as fully and conclusively established, as are those of the other prisoners. It is contended by the law-officer that the act done by the prisoner does not constitute a criminal offence, because his confession denies a guilty knowledge, and his immediate surrender of the property to the police implies an honest keeping, but I cannot admit the fairness of this inference when I reflect that the surrender was not spontaneous, as in the case of the witness Pursun Das, and that the articles were retained with every possible regard to concealment and secrecy, a state of things quite unnecessary under the circumstances alleged in the prisoner's confession for receiving charge of and holding them. I would therefore convict the prisoner of the crime charged, and sentence him to three years' imprisonment with labor in irons. Although the confession of the prisoner Geereedharee Holuye, No. 2, amounts only to privy before and after the fact, yet it is clear to me from the tenor of the record and the general probabilities of the case, that he did more than he actually admits, and that his share in the transaction was neither so disinterested nor so passive, as he would have it believed. In this view of the case, I regard his criminality as in no way inferior to that of the prisoner Khedun Shaha, No. 1, whom I convict of complicity in the theft, and award them both the same punishment, viz., four years' imprisonment with labor in irons. The prisoner Anund Raur, No. 4, I sentence to two years' imprisonment with labor, commutable to a fine of 10 rupees payable in fifteen days, but suspend the execution of all these sentences until the receipt of the court's orders on this reference.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin). This reference is only made regarding the prisoner, No. 3, Rambhujee Holuye. By his own acknowledgment, although he knew that Khedun was in custody on the charge, he did not of his own accord produce the property, but kept it concealed till it was demanded of him by the police. It was disposed of also in his house in a manner which strengthens the belief of the intention to conceal it, as improperly acquired. We, therefore, concur with the sessions judge in convicting him of receiving the property, knowing it to have been stolen, and sentence him as recommended by that officer.

1854.

February 24.

Case of
KHEDUN SHA-
HA HOLUYE
REWERE-
WALLAH and
others.

PRESENT :

H. T. RAIKES, Esq., Judge.

GOVERNMENT,

versus

BASUR MAHOMED ALIAS BAROOMEAH (IN TRIAL No. 1, No. 17, TRIAL No. 2, No. 30,) MAHOMED JULLAUL ALIAS JALOOMEAH (IN TRIAL No. 1, No. 18, TRIAL No. 2, No. 31,) MAHOMED ENOOS (IN TRIAL No. 1, No. 19, TRIAL No. 2, No. 32,) JUNGU MAHEE (IN TRIAL No. 1, No. 20, TRIAL No. 2, No. 33,) ABID MAHEE (IN TRIAL No. 1, No. 21, TRIAL No. 2, No. 34,) SHAIK MADAH (IN TRIAL No. 1, No. 22, TRIAL No. 2, No. 35,) MEGUN MAHEE (IN TRIAL No. 1, No. 23, TRIAL No. 2, No. 36,) AFZUL MAHEE (IN TRIAL No. 1, No. 24, TRIAL No. 2, No. 37,) KOLEEM MAHEE (IN TRIAL No. 1, No. 25, TRIAL No. 2, No. 38,) FESIE MAHEE (IN TRIAL No. 1, No. 26, TRIAL No. 2, No. 39,) SHAIK SOLEEM (IN TRIAL No. 1, No. 27, TRIAL No. 2, No. 40,) MAHOMED ABID (IN TRIAL No. 1, No. 28, TRIAL No. 2, No. 41,) EDUN (IN TRIAL No. 1, No. 29, TRIAL No. 2, No. 42.)

Sylhet.

1854.

February 24.

Case of
BASUR MA-
HOMED alias
BAROOMEAH
and others.

Prisoners

charged in two different cases, one of attack on and plunder of a boat, and the other of dacoity with murder, convicted with one exception of the attack and plunder of the boat, and all of them of plundering property from a dwelling-house. Sentenced to five years and three years' imprisonment respectively.

CRIME CHARGED.—*Trial No. 1*, 1st count, attack on a boat, plunder of property to the value of about Co's Rs. 150 and assault; 2nd count, privy to the above crime. *Trial No. 2*, 1st count, wilful murder of Mussumat Luknah and dacoity of property to the value of Co's. Rs. 841-6; 2nd count, privy to the above crime.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 9th January, 1854.

Remarks by the sessions judge.—*Trial No. 1*—The prosecutor states that after the prisoners had plundered the boat of Pylaram Shah, he heard that they had attacked his house and robbed it, and that on going home he learnt from his brother, Narain Shah, the particulars of the transaction.

Narain Shah (witness No. 1,) states that he and Mussumat Moheenees were left in the house with an infant four months old, and that on the evening of the 12th October, Jungee Mahee (prisoner No. 33,) came to his house and asked him for salt, and that when he turned to procure it, Jungee Mahee sprang upon him and called out, and that the other prisoners entered the house armed with sticks. That Mahomed Julaul (31) seized him while Mahomed Basur (30) tied his hands and Afzul (37)

struck him with a stick. That they asked him where his money was, and that Mahee struck him on the ear so severe a blow as to draw blood. That to save his life he told them where his money was kept, and that they broke open the box and plundered it of property including rupees to the value of 800 rupees. That the prisoner, Madah (35) snatched a ring from the nose of Mussumat Moheenee, and that they then all decamped, and that on their departure, he discovered the infant had been trodden on and severely injured, and that she died the next day.

Before the magistrate, however, this witness did not mention the name of the prisoners who struck him, nor did he state that Madah had snatched a ring from his daughter's nose.

Mussumat Moheenee, with trifling discrepancies, confirms her father's story, and states that the infant was sleeping near the plundered box, that it was previously in good health, but died the next day.

The neighbours hearing the disturbance were attracted to the spot and have distinctly sworn to the prisoners, whom they met carrying away the plundered property.

The prisoners set up the same defence, as in the case of Pylaram, and called witnesses to prove that the child had died of fever, but they are merely *fukeers*, who say the child was shewn to them and that its head was hot.

The body of the child was sent in for examination, but was in so decomposed a state that examination was impossible; but the sooruthall, which was duly attested, shews that there were marks of violence about the head of the child, and there can be no doubt but that its death was caused by violence.

The assessors convict the prisoners of dacoity and culpable homicide, but for the latter part of the verdict I dissent.

The crime committed by the prisoners clearly comes under the definition of dacoity with murder; for there is no doubt but that plunder was their object, though they are not, correctly speaking, dacoits. Flushed with the successful plunder of Pylaram's boat and knowing that the house was unprotected, they attacked and plundered it, using violence to its inhabitants, Narain Shaha and Mussumat Moheenee, and killing the infant by treading on it; and though the death of the infant was probably unpremeditated, the illegality of the deed in which the prisoners were engaged, renders them guilty of murder.

Under the circumstances, I would convict the prisoners of dacoity attended with murder, and would beg to recommend that the leaders, Mahomed Basur alias Baroomcah and Mahomed Jullaul alias Jaloo Meeah, be sentenced to 14 years' imprisonment with labor in irons, and the remaining prisoners to 7 years' imprisonment with labor in irons.

Trial No. 2—The cases are distinct, but the prisoners are the same, and I must premise that on the 23rd December last, I

1854.

February 24.

Case of
BASUR MA-
HOMED alias
BAROOMCAH
and others.

1854. quashed, after commencing the trial, the commitment, as the
 February 24. magistrate had sent up both cases as one, and had charged the
 prisoners with plunder and manslaughter, whereas the evidence
 Case of shewed, that while one case was that of plunder, the other was
 BASUR MA- that of dacoity attended with murder.

HOMED alias
 BAROOMSEAH
 and others.

I shall notice each case separately. The prosecutor states that in the Dusserah festival, he was taking the thakoor belonging to his masters, Jadoo Roy and Neelmoney Roy, in a boat, when he saw a large number of men on the bank, armed, and suspecting their intention to be an attack upon his boat, as his masters had taken out execution of a decree in the village, he escaped. That the prisoners, Nos. 17 and 18, committed the attack upon his boat, giving instructions for the seizure of his own person and that Enoos (prisoner No. 19,) Jungu Mahee (prisoner No. 20) Sheikh Mada (No. 22,) Afzul Mahee, (No. 24,) Fesie Mahee, (No. 26,) and others, executed the order, and not finding him, broke up the image and plundered it of its dress and ornaments, to the value of 150 rupees, and that he afterwards heard that they had subsequently plundered the house of one Shadooram Shah and murdered a child.

The prosecutor's story is fully borne out by the testimony of his witnesses, Brisoram Shah (No. 1,) Sookoor Mahomed (No. 2,) Tetoo Meeah (No. 3,) Akil Mahomed (No. 4,) and Radhagobind Dutt (No. 5), who prove the charge against all the prisoners, Abid Mahee, prisoner No. 21, excepted.

The prisoners, 17 and 18, denied the charge and pleaded an *alibi*, and enmity with the prosecutor's masters, but their witnesses have failed to substantiate the *alibi*, while the enmity between them and the masters of the prosecutor is notorious and was the primary cause of the aggression.

Sheik Enoos alias Enye (No. 19) denied the charge, but made no defence and called no witnesses.

Jungu Mahee (No. 20) pleaded an *alibi*, but called no witnesses.

Sheik Mada (No. 22) pleaded an *alibi*, and stated that he had named witnesses for his defence, who had not been summoned, but he distinctly stated to the magistrate that he had no witnesses.

Mugun Mahee (No. 23) Afzul (No. 24), Koleem (No. 25), and Soleem (No. 27) stated they were in Cachar in mouzah Derkutsh, where they had gone to purchase bamboos, but their witnesses only state that they had gone to Cachar previous to the day on which the occurrence took place, and that they afterwards saw them return into the village with some bamboos.

Fesie Mahee, No. 26, pleaded an *alibi*, and his witnesses have supported his story, but they are unworthy of credit, as the witnesses for the prosecution, both in this case and that of Sadooram, distinctly swear to his identity.

Mahomed Abid, No. 28, states that he was at a village, six hours' distant, on the day of the occurrence with his brother, Bota, but his witnesses can only state the month and not the day on which he was absent. 1854.
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Prisoner (No. 29) denies his guilt, but makes no defence and calls no witnesses.

The assessors find the prisoners, 17 and 18, guilty of procuring the plunder of the boat and the remaining prisoners, with the exception of Abid Mahee (No. 21) guilty of the attack upon, and plunder of, the boat, and in this verdict I agree.

The existence of enmity between the prisoners, No. 17 and 18, and the masters of the presecutor, would tend to throw suspicions upon the truth of the prosecutor's story, were it not that this enmity was the origin of the aggression. The prisoners made the attack with the intent of seizing upon and ill-treating the prosecutor, and not finding him, for he had made his escape, they plundered the boat in revenge.

The prosecutor, I would observe, did not prefer his charge to the darogah, till the 19th of October, the transaction having taken place on the 12th, but mention of it is made in the petition of Shadhooram, who went to the thannah on the 14th.

No sentence was passed in this case, as a charge of dacoity and murder was pending against the prisoners.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes). After hearing counsel in the case for the prisoners, I come to the conclusion, that the main facts detailed by the judge are sufficiently proved against the prisoners, namely, that with the exception of Abid Mahee, No. 21, they first attacked and plundered the boat of Pylaram and then entered the house of Shadhooram, where they assaulted Narain Das and carried away the property they found therein. But I do not consider the offence in the latter case amounts to dacoity, nor that murder is proved to have been committed.

The house was not attacked by open violence in the first instance; on the contrary, one of the prisoners entered by the open door on pretence of buying salt, and while there, called in the others, who then broke open a chest and carried off the contents; to this extent they are clearly guilty. The death of the child is not satisfactorily shewn to have been caused by any act of the accused. The mother, who was present all the time, says that after the prisoners left the premises she found the child with blood flowing from its mouth and nose, and as she had put it to sleep near the chest, which the prisoners forced open, she believed some of them must have trampled upon and injured the infant. There was, however, no medical examination to ascertain the true cause of death and the mofussil inquest report proves nothing to the point, while the notorious enmity between the prisoners and their accuser tends to a sus-

Case of
BASUR MA-
HOMED alias
BAROOMEAH
and others.

1854. picion, that such a charge may have been unscrupulously added to aggravate the offence complained of. In the absence, therefore, of better evidence than I find on record, I am not inclined to agree with the judge in the inference drawn by him on this part of the case.

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BAROOMKAR
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I convict the prisoners, with the exception of Abid Mahee, No. 21, of being implicated in the attack and plunder of a boat, and all the prisoners including Abid Mahee of being implicated in the plunder of property from a dwelling-house, and under all the circumstances, sentence them, with the exception of Abid Mahee, to five years' imprisonment with labor, and Abid Mahee to three years' imprisonment with labor, or to pay a fine of fifty rupees in lieu of labor, payable in one month.

PRESENT :

A. DICK, Esq., *Judge*,
B. J. COLVIN, Esq., *Officiating Judge*.

Patna.

GOVERNMENT,

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versus

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MOHEB ALLY.

Case of
MOHEB ALLY.

The false attestation of a mookhtearnamah before a collector, in a case not judicially before him, does not constitute perjury.

CRIME CHARGED.—1st count, perjury, in having on the 8th January, 1853, intentionally and deliberately under a solemn declaration taken instead of an oath, attested in the presence of Arthur Littledale, Esq., acting collector of Patna, a mookhtearnamah, dated 5th January, 1853, purporting to be executed by Aleemuddeen, No. 5, and four others, in favor of Futteh Ally mookhtar, to enable him to draw the surplus proceeds of sale on account of a half anna share in Chuk Sukuna, knowing the said Aleemuddeen to have deceased long prior to the execution of the said mookhtearnamah; 2nd count, deliberately and intentionally uttering the aforesaid mookhtearnamah, knowing the name of the said Aleemuddeen to have been affixed thereto by fraud and forgery.

Committing Officer.—Mr. W. Ansley, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 19th January, 1854.

Remarks by the sessions judge.—The defendant was charged, *first*, with perjury in having sworn to a mookhtearnamah representing the interests of several shareholders in mouzah Chuk Sukuna, pergunnah Shahjihanpore, whereas on enquiry it was found that one of the said shareholders by name, Aleemuddeen, had demised upwards of fifteen years previously, and *secondly*, with having uttered the said mookhtearnamah, knowing it to be false.

Certain surplus sale proceeds were left in deposit in the collectorate, due to the *ci-devant* proprietors of Chuk Sukuna and the name of one of them, namely, Aleemuddeen, (who had been dead many years) not being erased from the rent roll, the money could not be recovered except by a regular form of mutation or by forging Aleemuddeen's name as an applicant for payment.

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MOHES ALLY.

* No. 3, Soobuns,

No. 4, Chowdhry,

No. 5, Khuderun.

† No. 1, Bhoodpenas,

No. 2, Futteh Ally.

Witnesses, Nos. 3, 4 and 5* prove

Aleemuddeen's death and witnesses

Nos. 1 and 2,† establish the attestation

of the mookhtearnamah and identity of

the defendant. Indeed the defendant

himself admits that he signed the mookhtearnamah, but he pleads

‡ Witness No. 2. that he did so at the request of the mookhtear‡ and of several share-

holders then present. I do not consider the defence at

all exculpatory. The defendant heedlessly and recklessly

attested the truth and genuineness of an instrument, regard-

ing which he knew nothing. He obviously belongs to a class of

hangers-on about courts and offices, ever ready and willing for a

consideration to give effect by their evidence to any proceeding,

no matter how unscrupulous or disreputable. The first charge

in the indictment is, I think, fully proved, but not the second,

namely, deliberate and intentional uttering of the *mookhtearnamah*.

I would recommend a sentence of three years' imprisonment

without labor and irons, and to pay a fine of 100 rupees within

fifteen days, from the date of sentence, or in default of payment

to labor. The law-officer acquits on the ground of the defend-

ant being at the time ignorant that he was deposing to a false-

hood and also on the assumption, that he had sufficient warrant

to sign the *mookhtearnamah* from the assurance of the principals

in the transaction, then present, that the mookhtearnamah was

genuine.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin). We acquit the prisoner of the crime of perjury charged against him, because the collector was not authorized to administer an oath, or the substitute for an oath, in attestation of a mookhtearnamah, at least not in a case not *judicially* before him. On the second charge we observe that both the sessions judge and the mooftee have acquitted the prisoner. In that respect, therefore, the case is not before us; and we can pronounce no opinion on it, or enter upon it as requested by the Government pleader, Sumbhoonath Pundit, for the prosecution. We add that the sentence, proposed by the sessions judge, is illegal, as for perjury labor is not commutable to fine by Regulation II. 1834.

PRESENT :

SIR R. BARLOW, BART., AND H. T. RAIKES, Esq., *Judges.*

RUMJOO KHAN AND GOVERNMENT,

*versus*GOWHUR ALLY, ALIAS GOKOOL (No. 2,) AND CHOOLA-
HEE SINGH RAJPOOT (No. 3.)

Behar.

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Case of
GOWHUR AL-
LY alias Go-
KOOL and an-
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CRIME CHARGED.—1st count, wilful murder of Dhoomun Khan; 2nd count, severely beating the said Dhoomun Khan on the 15th August 1853, from the effect of which he died, on the 26th of the same month in the city hospital; 3rd count, beating Rumjoo Khan, plaintiff.

Committing Officer.—Mr. A. G. Wilson, officiating magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 22nd December, 1853.

Two prison-
ers convicted
of aggravated
culpable homi-
cide, sentenced
to fourteen
years' impris-
onment.*Remarks by the sessions judge.*—The deceased's statement, made before the principal sudder ameen in hospital, on 17th August last, was to the effect, that about mid-day of 15th August last, he was sitting in Edoe Sikulgur's shop, in the town of Daoodnuggur, at no great distance from his brother the prosecutor's dwelling, when Gowhur Ally alias Gokool Kulwar, prisoner No. 2, and Cholahée Singh, prisoner No. 3, accompanied by a body of strange armed followers, suddenly seizing and dragging him off, beating him as they went, finally beat, and threw him down senseless; the police being at hand, before one Jowlal's house, situated in the same long street, but 200 yards' distant, in an easterly direction towards Gookool's house, sixty to seventy yards off, in which state and place, the police following found him. The prosecutor on hearing of the outrage also hastened up, and on remonstrating, was slightly beaten by the two prisoners, following them, however, to Jowlal's.The deceased died eleven days afterwards, as proven by the *post mortem*, from the effects of the brutal beating he had undergone. Doctor Diaper (witness No. 17,) observed "externally great swelling of the trunk generally, the result of severe beating," and compares the injuries he had sustained, as exactly similar to those he would have encountered in a pugilistic contest from continued blows of the fist. There were no traces of any former disease, and he appeared to have been a healthy strong subject. The seventh and eighth ribs on the right side had been fractured, and their broken ends driven into the substance of the lung on that side.

The case, as originally forwarded by the police, and as it stood at first under trial before the principal sudder ameen, only im-

plicated Choolahee Singh on the strength of the evidence of the

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Jan Ally, witness No. 1.
Jankee Goala witness No.
2, Edoo Sikulgur, witness
No. 3, Buxoo Mukayres
witness No. 4.

written witnesses, who only deposed to Choolahee having seized and taken the deceased away from Edoo's shop towards Jowlal's. That they did not see Gokool, although they had heard that

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his assailants were Gokool's people. This was but a very partial and incomplete investigation, as the outrage itself was completed elsewhere, that is between Edoo's shop and Jowlal's house, which as seen by Mr. Assistant Brodhurst "is not visible from Edoo's shop in consequence of irregularity in the position of the intervening buildings." Mr. Assistant Brodhurst being on deputation at Daoodnugger, the case was made over to him for full enquiry, when according to his proceedings of the 24th October, and following dates, he succeeded in obtaining the evidence of eye-wit-

* Witnesses Nos. 6 to
13 of whom two, Nos. 5
and 14, were absent before
this court.

nesses* to what took place before Jow-
lal's house, who deposed to having seen
Choolahee and his followers, strangers,
acting under Gokool's orders, merciless-

ly beat the deceased, and cast him down senseless before Jow-
lal's house, in which state, on Gokool's directions, Choolahee
subjected the body to grossly indecent indignities, not altogether
improbable, with regard to the character of such a revengeful
outrage, committed by such persons, and in such a fearless ruffi-
anly manner, in the main street of a large town at mid-day
within hail of the thannah itself.

The deceased was a dismissed police burkundaz, who had re-
sided the last two or three years at Gya, and, according to the
prosecutor was, at the time of the occurrence, on a few days' visit
to him consequent on the prevailing sickness at Gya. Gokool
also had only recently returned to Daoodnugger from Gya, as
stated by the witnesses generally, accompanied by Choolahee a
resident of Gya. Both are notorious bad characters. Choolahee
looks a stupid heavy athletic man, and is apparently a profes-
sional bully; between 1843 and 1852, having been repeatedly
punished for assaults and wounding: whilst in 1846 he under-
went five years' imprisonment for theft. But Gokool is the
master offender of the two. Slight in personal appearance, but
of good address, and great intelligence; he figures in one unbroken
series in the criminal annals of the district from 1828 down to
1853. The crimes he has stood charged of are almost entirely
dacoity and assault, the former as late as 1849, and his turbulent
disposition is best bespoken by the fact, that whilst imprisoned
in the district jail for dacoity, he once broke jail and again
turned out so refractory that in September 1840, he was trans-
ferred to the Allypoor jail, where he underwent the remaining
period of his sentence. In 1850, he was again in jail in default
of bail for good conduct, when it was again found necessary to

1854. keep him separate from the other prisoners. It was only on so

February 27. late a date as June last, that he got out of jail on bail given by one Nazur Ally. Mr. Brodhurst, paragraph 7th of his report, dated Daoodnugger 29th October 1853, remarks; "To show further the extraordinary influence he exerts in Daoodnugger, I need only mention, that since I arrived here, with only a few exceptions, all the shops in the town have been closed, through fear that their owners might be called upon to give evidence against one, who has amply displayed his vengeance on former occasions. This man has no trade whereby he gains his livelihood; that is derived solely by plundering the mahajuns, who dare not refuse to comply with his requests, however, unreasonable they may be."

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other.

Much mystery has been made of the cause of the outrage, which very probably had its origin in the position of the parties respectively, as an ex-police officer and a dacoit. The occurrence throughout shows the revengeful outrage to have been personally directed against the deceased, for whilst the prosecutor, notwithstanding the quarrel the day before, and Gokool's version as below, was only slightly beaten for attempting to interfere, the deceased was all but pommelled to death on the spot, as would very probably have happened, but for the tardy arrival of the police. The prosecutor and deceased first told the police that it happened consequent on their dispute with Gokool, the day before, but they both withheld any such statement in the magistrate's court, the former denying having made any such statement, on so late a date as 24th October last before Mr. Assistant Brodhurst, whilst the deceased only accounted for the occurrence to the principal sudder ameen on 17th August last, from Gokool's "paying off old scores consequent on his having been under his charge, whilst under arrest in one of the dacoity cases." But that an altercation did take place between the parties, the day previous, is undeniable. It is acknowledged by the prosecutor before this court, and that he had been put up to conceal it by the police, not improbable as the matter was first ferretted out by Mr. Brodhurst, (vide extract thannah diary, 15th August, 1853, No. 113,) up to which time the police had done their best to swamp the case as against Gokool. This diary

* Witnesses Nos. 54, 55. is confirmed by both darogah and mohurrir* before this court, and is to the purport "that first the prosecutor came complaining how the day previous Gokool had been quarrelling with the deceased, consequent on old ill-will between them, and had also threatened him, the prosecutor." Then Gokool followed, repeating the same information against the prosecutor, and the deceased, also referring to old grudge (*adawut sabiq*) between them, with the addition that they had beaten him, at the same time shewing a slight bruise on his right hand. Gokool's defence also before this court

acknowledges the occurrence thus recorded, under a colouring in keeping with the suppression of the prosecution in the first instance, as solely implicating Choolahee, viz. "that he, Gokool, was lying on a *charpae*, when the prosecutor, deceased and Choolahee were passing along in liquor quarrelling together, and making use of their *lattees*, during which the prosecutor struck him, whether intended for Choolahee or himself, he cannot say, and on hearing that the prosecutor had complained, he also complained." This version is an inconsistent one in itself, and had there been any truth in it, it is not likely, under all the circumstances of the case, that it would have been so directly contradicted by the diary itself, which, there can be little doubt as recorded on the spur of the moment, and at first so systematically kept in the back ground, is the true version of what immediately gave rise to the next day's occurrence now under trial.

Gokool has always pleaded not guilty;—that he was at one Leela's shop, when the uproar took place, and then went home without witnessing it. He attributes the accusation against him, to the machinations of some of the share-proprietors of Daood-nugger, particularly Fuzzul Imam Khan, who had tutored the witnesses, Nos. 5 to 14, to give false evidence against him. He summoned the witnesses, Nos. 24 to 49.

Choolahee has always pretended that he had visited Daood-nugger to recover a few rupees due to him by the deceased, who not paying, he had him seized by some peons of Fuzzul Imam Khan, whose names he does not know and with whom the deceased must have quarrelled. He called witnesses, 48 to 51, who knew nothing in his favor, whilst two others (52 and 53) deposing to money transactions between Choolahee and the deceased, are loose characters of the town of Gya, the former of whom is almost as notorious as Choolahee himself.

The *futwa* of the law-officer, I think, labors very incorrectly and in a very strained manner, when the circumstances attending the sudden outrage are considered, as lasting for such a distance between Edoo's and Jowlal's residences, to discredit the evidence for the prosecution, which, he is of opinion, is got up, and comments on Gokool's being a poor man unlikely to have had the command of followers, whilst his witnesses are respectable people, and more credible than those for the prosecution, at the same time that he observes the prosecutor had perjured himself, regarding the previous day's quarrel, he acquits both prisoners.

Had the prosecution been trumped up, it would scarcely have been so nearly successful, prior to Mr. Brodhurst's investigation, in making Choolahee the scape-goat towards Gokool's escape from justice, nor would evidence as to the transaction at Edoo's, to the suppression of that at Jowlal's have been so palpably managed in the first instance. At the commencement of the uproar, Sufdur Ally, chowkeedar, ran to the thannah with the

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ot

information that the deceased had been seized and carried off from Edoo's shop by the bad character, Gokool, accompanied by nineteen to twenty followers, and, if not quickly cared for, murder would take place. Although Sufdur Ally before Mr. Assistant Brodhurst, on 25th October last, No. 73, denied having given any such information, and its attesting witnesses, Nos.

* These attestations are usually most laxly conducted, if not often times fabricated.

15 and 16* knew nothing about it, both darogah and mohurrir, Nos. 54 and 55, swear to it. The darogah's return on its face, and the date on which it was filed, place its authentic preparation at the time beyond doubt. From this return, and the darogah and mohurrir's evidence, I gather that the police hurried off at once, but must have cooled by the way, for the darogah turned back from Edoo's shop, whilst the mohurrir going on, picked up the wounded men before Jowlal's house, and proceeding onwards to Gokool's house, where "the assailants together with Gokool had taken refuge barricading themselves," vide return, he, without further ado, went back to the thannah, when the darogah as leisurely transferred the case to the jemadar. Throughout this again, Gokool's name alone figures, as seems most natural and truthful in an occurrence of such a nature, reported as happening on the spur of the moment, before any opportunity for temporizing, as in the subsequent leisurely proceedings could have offered itself. In like manner the quarrel of the day before, as already narrated, was at first mentioned to the police, and afterwards as studiously kept in the back ground, as the completion of the outrage before Jowlal's was left uninvestigated, though alike stated from the first, until Mr. Brodhurst's investigation again brought them to light. All this is too natural and consistent with the suppression thus attempted, to have any thing in common with a trumped up prosecution, whilst at the same time any intelligible motives for its being a false prosecution are left untold. Gokool's notoriety as a dacoit and ruffian, ought to suffice any one, that he is neither poor, unsupported, or incapable of commanding followers, more especially in a place like Daoodnugger of old, notorious for its dacoits and bad characters, whom, its disreputable petty proprietary cannot tend to improve, so that with an inefficient police, sufficiently evil local influences can be easily brought to bear either for purposes of suppression or concoction. The calendar itself also shews Gokool to be no poor unimportant person, when he has entered thereon such an array of unimportant witnesses as Nos. 24 to 49, the greater number of whom also have attended, and amongst them Jhowree Khan (witness No. 31) nephew of the share proprietor Fuzzul Imam Khan, the concocter of the prosecution according to Gokool. Besides the prisoners' defences are utterly weak and inconsistent in themselves. Choolahee's rests on unsupported assertion, and is an improbable story in

itself, for he has never even attempted to explain why Fuzzul Imam Khan should have busied himself in his affairs, even if he possessed the money to lend the deceased, to say nothing of the improbability of any such cause giving rise to the singular beating vouched for by the *post mortem*. Gokool's too is just as unlikely, that a person of his character should have been so near an uproar, and know nothing about it, whilst the testimony of the witnesses produced by him, as to Fuzzul Imam Khan's having tutored the witnesses for the prosecution is in itself of a manifestly tutored character. Jhowree Khan (witness No. 31) deposes that the walls of his dwelling, abutting his uncle's Fuzzul Imam, he listened, and heard him tutoring the witnesses, and all the other witnesses' (witnesses Nos. 32 to 36,) knowledge in this respect is derived from this listener. The respectability of Gokool's witnesses can be best estimated by the fact, that the prosecutor elicited from this listener Jhowree Khan, that if not punished, he had at least been implicated in a case of perjury. There is also an improbable story, by two low women of the town of Gya (witnesses Nos. 43 and 44) as to Fuzzul Imam Khan tutoring and subsidizing the prosecutor; whereas with the solitary exception of concealing the previous quarrel, the prosecutor's statements from the first, long before any tutoring of the kind could have taken place, and up to the last have been uniformly and consistently the same in all details, which with every allowance for the confusion incidental to such a sudden uproar, has been alike consistently maintained by all the witnesses for the prosecution. Thus viewing results, I do not hesitate to accept the testimony of the witnesses, Nos. 1 to 4, as to what took place at Edo's shop, and witnesses, Nos. 6 to 13, as to what happened before Jowlal's as the only natural and truthful explanation of the occurrence, which doubtless was intentioned for a brutally revengeful purpose, by such experts as Gokool and Choolahee, whose studied object must have been internal, rather than external injury, so commonly known and practised under the designation of *Bhitur mar* (so termed in the first return) which, if not intended to be fatal, must at least have been purposed for grievous bodily injury. Legal proof of wilful murder failing, I cannot convict the prisoners short of extremely aggravated culpable homicide, and would sentence Gokool to 14 years' imprisonment with labor in irons and banishment, and Choolahee to ten years' imprisonment with labor in irons and banishment.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Baronet and Mr. H. T. Raikes). This is a case of great aggravation; the deceased was beaten so severely that two of his ribs were broken, and the *post mortem* examination shews that the internal injuries sustained by the deceased were the cause of his death,

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1854. some seven days after his admission to hospital, during which he almost daily threw up large quantities of blood.

February 27. The assault was committed in the public bazar about mid-day, and was witnessed by several persons, whose evidence clearly proves, that the prisoners were the principal parties. There appears to have been some undue influence exercised, with the view of concealing the offence. The deceased and his brother, the prosecutor, however, named both the prisoners before the police on the 15th August, and before the principal sudder ameen in the foudary court on the 3d day after the occurrence, and the assistant, Mr. Brodhurst, was enabled, by proceeding to the scene of the assault, to procure the evidence of those living on the spot who witnessed the ill-treatment received by the deceased.

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Gowmura Ali
ly alias Go-
kool and an-
other.

The sessions judge, differing from his law officer, convicts the prisoners of extremely aggravated culpable homicide, rejecting the defence set up by the prisoner No. 2, to support which no less than twenty-five witnesses were cited, but without any effect in favor of the prisoner. This prisoner's character, as given by the sessions judge, shews him to be a most dangerous individual. The prisoner No. 3, is scarcely better, his defence is altogether unsupported.

After hearing Aftabooddeen, pleader on the part of Gokool prisoner No. 2, who endeavored to establish some discrepancy in the evidence adduced for the prosecution, we are of opinion that nothing has been elicited in favor of the prisoners. We, therefore, convict the prisoners Gokool and Choolabee Singh of aggravated culpable homicide, and, under the circumstances of the case, sentence them each to fourteen years' imprisonment with labor in irons.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

TRIAL No. 1.

RAMMANATH SHAH AND GOVERNMENT,

versus

HANIP SIRDAR (No. 1,) GOUR DASS (No. 2, APPELLANT), AND RAMTUNNOO DASS (No. 3, APPELLANT.)

TRIAL No. 2.

UNNAPOORNA DASSEAH AND GOVERNMENT,

versus

THE SAME PRISONERS.

Rajshahye.

CRIME CHARGED.—*Trial No. 1*, prisoner, No. 1, 1st count, burglary in the house of Rammanath Shah; 2nd count, theft; 3rd count, keeping in his possession the stolen property, knowing the same to have been stolen—Prisoners, Nos. 2 and 3, keeping in their possession the stolen property, knowing the same to have been stolen. *Trial No. 2*, prisoners Nos. 1 to 3, keeping in their possession stolen property, knowing the same to have been stolen from the house of Unnapoorna Dasseah, prosecutrix.

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CRIME ESTABLISHED.—*Trial No. 1*, prisoner, No. 1, being an accomplice in theft, and prisoners, Nos. 2 and 3, having in their possession stolen property, knowing the same to have been stolen. *Trial No. 2*, prisoners Nos. 1 to 3, having in their possession stolen property, knowing the same to have been stolen.

Sentence passed upon the prisoners by the sessions judge affirmed. Propriety of commitment declared.

Committing Officer.—Baboo Gopal Lall Mitter, deputy magistrate of Nattore.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 1st December, 1853.

Remarks by the sessions judge.—These three prisoners were apprehended one night, by a thannah burkundaz in a boat, and several cooking utensils were found in the boat. One of these the prosecutrix in trial, No. 2, claimed, and the rest the prosecutor in trial, No. 1; the latter deposed that his house had been burglariously entered and robbed; and the former that she lost, one night, from her cooking shed a *bowlee*, or pair of *pincers*, used to lift a cooking-pot from the fire, and the one in court was the article, worth one *anna*. No. 1, confessed before the deputy magistrate that he had accompanied the other two on a thieving expedition, and on this confession the law officer convicts him of being an accomplice in one case, and (as charged) a receiver in the other.

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The other two prisoners are convicted by him of being receivers in both cases. Concurring in the fatwa, I have sentenced them as herein stated. Though No. 2, was before convicted and punished for dacoity, the cases, in my opinion, were quite within the deputy magistrate's competence to dispose of without commitment, under Clause 2, Section 2, Regulation VI. of 1824. The value of the property stolen in one case being 5 rupees in the other only *one anna*.

Sentence passed by the lower court: prisoners, Nos. 1 and 3, to two years' imprisonment and prisoner No. 2, to three years; all with labor and irons, being a consolidated sentence for both offences.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) Nos. 2 and 3, Gour Dass and Ramtunnoo Dass, are appellants in these two cases. The former, in his petition of appeal, makes quite a different statement from what he did in his defence before the deputy magistrate and sessions court. There is no doubt of the fact of the thefts, by which the stolen property was acquired, and the evidence proves that the boat belonged to Gour Dass, and that the two prisoners were of the same party with prisoner No. 1, Hanip Sirdar, who confessed the commission of the offences. I, therefore, uphold the conviction and sentences passed upon the prisoners Nos. 2 and 3.

I observe that the deputy magistrate was bound to commit, under Clause 2, Section 2, Regulation XII. 1818, prisoner No. 2 having been before convicted of dacoity, and the charge against one of the prisoners in case No. 1, having been burglary.

PRESENT :

A. DICK, Esq., *Judge*.

GOVERNMENT,

versus

KURUN SINGH ALIAS PURGAS SINGH, SEPOY.

Huzareebagh.

CRIME CHARGED.—1st count, highway robbery attended with wilful murder of Meghern Ram Sepoy of 67th regiment N. I. deceased; 2nd count, knowingly keeping the above plundered property in his possession.

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Committing Officer.—Dubbeerooddeen Ahmed, deputy magistrate of Burhee.

Case of
KURUN SINGH
alias PURGAS
SINGH, sepoy.

Tried before Major J. Hannington, deputy commissioner of Chota Nagpore, on the 29th December, 1853.

Remarks by the deputy commissioner.—The Government is prosecutor in this case.

A native artillery man returning to his home from Rangoon with a sick sepoy of the 67th N. I. murdered the latter, and being convicted on violent presumption, was sentenced to transportation for life.

The prisoner pleads *not guilty*.

A sketch of the circumstances developed in the record of the deputy magistrate's proceedings, will materially help to a clear understanding of this case.

On the morning of the 25th June, information was brought by one Buksh Dywar to the police station at Burhee, on the great trunk road, that the body of a man, with the head cut off, had been found near the guard-room, which is east of Baranchua, at about eighty paces from the road, in a puddle. The deputy magistrate of Burhee proceeded at once to the spot, and before his arrival the head had been found under a bridge near to where the body lay. From appearances the deputy magistrate conjectured that the murdered person was a sepoy, and on inquiry ascertained that a guard of a Naik and four sepoys had stopped at Burkutta, on the 24th June, and also that two sepoys from Rangoon, had on the same day put up at a huckster's shop in Burkutta. The Naik of the sepoy guard informed the deputy magistrate that of the two sepoys coming from Rangoon, one was named Purgas Singh, an artillery man inhabitant of Dighora in pergunnah Kasmar, zillah Chupra, and the other, whose name he did not know, was a sepoy in the 67th regiment, and was by caste an Ahir or Kurmi of Sobarna in thannah Dighora, pergunnah Kasmar, zillah Chupra; that Purgas Singh was a fair man, about five feet nine inches high, the other a darkish man about five feet ten inches in height, a grenadier, and that they had a bay pony with them. Acting on this information, the deputy magistrate suc-

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ceeded in capturing the prisoner Kurun Singh alias Purgas Singh at Gya,* on the morning of the 27th June.

The evidence taken before the sessions court is as follows.

No. 1, witness Shewruttun burkundaz. In the month of June was sent together with Ramogur Singh towards Gya, with orders to apprehend one Purgas Singh a sepoy. On reaching Gya they searched in vain, but setting out early next morning, they, shortly after dawn, fell in with the prisoner who was leading a pony, at about five miles beyond Gya. They asked him where he was going, and what was his name. He replied, that he was going to Deghora in zillah Chupra, and that his name was Purgas Singh. They told him he was accused of murder, and that he must return with them. He desired to see their orders which they shewed to him, and at his request they took him before the magistrate at Gya, by whom he was sent under charge of the police from station to station on to Burhee. At Sherghattee, a weapon, called a "*gupti*," which the prisoner had with him, was carefully kept in charge by the police. At Dhanwa, the prisoner was put in charge of Adit Singh, burkundaz of that station, and from that time, the "*gupti*" disappeared. Witness and his companion mentioned this to the deputy magistrate at Burhee. Witness had not seen the prisoner before he went in search of him, was told that the prisoner had large eyes, and a red pony, and was going towards Chupra. The pony was laden with bundles on both sides.

No. 2, witness Ramagur Singh. To the same effect as the preceding witness.

No. 3, witness Jhuree Haluye. Prove the record of the inquest.

" 5, " Chunder Haluye. The head was severed from the body. The deceased was of darkish complexion and quite young, the beard and whiskers not fully grown.

No. 6, witness Mohun Singh Chowdry. Prove that sundry articles,

" 7, " Mathurapershad. now in court, were found

" 8, " Ledho Sahoo. with the prisoner, among

" 9, " Radhalail. these things are cash Rs. 78,

a red coat with yellow facings, the buttons and lining of which have been torn away and a receipt for the sum of Rs. 41, remitted by Meghuru Raoote sepoy of the 67th N. I. to Rughuram jemadar.

No. 10, witness Kasseey Roy. " Was witness to a receipt, whereof the following is a transcript; Received from the collector of Chupra the sum of Co.'s Rs. 41 (forty-one) being the amount of a remittance from Meghuru Raoote sepoy, No. 1775, Gr. Company 67th Regt. N. I. to Bucharam jemadar." The name of this witness is endorsed on the receipt, but he cannot read and write,

* About seventy miles distant from the place where the murder was committed.

and is unable to recognize the document. The amount was 1854.
forty-one rupees.

No. 12, witness Bunsee Kooree Modee. About noon one day February 23.
the prisoner came to witness's shop and asked for a place to stop Case of
in, which witness gave. There were two men and a pony. The KURUN SINGH
prisoner told witness that he was an artillery man, that he was alias PURGAS
coming from Calcutta and was going to Chupra zillah. SINGH, sepoy.
His companion did not speak. They two ate, drank and slept together. The prisoner paid the bill, thirteen pice and five dummies.* On that day five sepoy had stopped at Ramnath Banca's shop. They had eaten and one of them, whose whiskers were bound up, was rubbing the plates when the prisoner asked him whence they had come; he said, from Dinapore and mentioned other particulars. When he had finished cleaning the plates, he came quietly to the witness's shop, and sat down with the two. The prisoner in conversation said "See, here is a Rangoon weapon," and he then shewed one. After long conversation the sepoy went away, and witness then gave his guests their supper of parched grain and curds. Witness having got payment, went to his rest and does not know at what hour the men left his house. The prisoner wore a brahminical thread—the other, who was of a dark complexion, did not. The sepoy, who had his whiskers bound, is here as a witness. Shortly after sunrise, the next morning, the jemadar of the road guard-room, summoned witness and Ramnath Bania and others, to see a dead body at about four miles distance. It had been raining and the body lay in a puddle, the head was under a bridge. The police officers brought out the head, and asked if the man had stopped at any of the shops, and then having examined the head, witness recognised the body as that of the dark complexioned man who had stopped with the prisoner at his shop. Witness has two houses for travellers. At one, the prisoner his companion and an old mendicant stopped. Does not know the name of the mendicant, he went away in the morning. Witness saw him go. The handle of the weapon shown by the prisoner was bound with brass, the weapon was straight.

Questions by prisoner.—Were not many persons besides me in your shop?

Answer.—I have told the truth that besides yourself, your comrade, and an old mendicant, there were none.

Question.—Was the horse that came with the two men, laden?

Answer.—There were things in the saddle bag.

Question.—Did those things appear to belong to one or to both?

Answer.—There were things on both sides of the bag.

Question.—Was the horse tended by one or both?

* A dumrie is one-eighth of a pice.

1854. *Answer*.—This prisoner paid and did the work, the other poor man was unable, he being sick.

February 28. *Question*.—Did either of the men ride the horse ?

Answer.—The bag was laden, I saw neither ride.

Case of
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alias PURGAS
SINGH, sepoy. No. 13, witness Deendyal. States that on a Thursday night, a guard of five sepoy arrived at Burkutta, and that on the next day, Friday, in the afternoon, the prisoner and another sepoy came and put up at Bunsee's shop. In the evening one of the sepoy of the guard went to Bunsee's shop, and conversed with the prisoner. Witness was called there by that sepoy to make arrangements about porters and then saw the prisoner, and another sepoy of a darkish complexion, sitting together on the same carpet, and all three sepoy were conversing. Witness was patrolling during the night, and when three or four hours of the night still remained, saw the prisoner and the other sepoy leave the place with a laden pony, and proceed westward. Some time afterwards, the sepoy of the guard, accompanied by other travellers, went in the same direction. After sunrise, witness heard that a traveller had been murdered, and witness was brought by the police to a place about three miles up the road, and there saw a headless body lying near the road in a pit. The head having been sought for and found, was fitted on the body by the police, and witness immediately said that the body was that of the darkish sepoy. Witness recognised also the clothes on the body and three days afterwards, in presence of the deputy magistrate, witness identified the prisoner and the pony. He now again identifies them. When the prisoner and the other man left the station together, no third person was with them. The darkish coloured man was sickly. An old mendicant was in the same room with the prisoner and the other. There were none besides.

No. 14, witness Huruk Kujoon. Lives in Dum Dum next door but one to Nursing Dutt Pundit. The prisoner Kurun Singh, artillery man, and another a red-coat sepoy came from Rangoon and stopped in Nursing Dutt Pundit's house. Witness went there and asked the prisoner about Rangoon, and about the red coat sepoy. The prisoner said that the sepoy had come from Rangoon on leave, and that his home was at Soharna. Witness knew before hand, that the prisoner's home was at Deghora. Each of the men had a bundle, the contents of which witness did not see and Kurun Singh had a Burmese weapon. Witness inquired of him what it was, and he said, the Burmese used it in fight. Next day, witness learned that by order of the serjeant major the men had been put in the lines of No. 1 company. Witness went there about 4 P. M., and asked Kurun Singh to carry a letter to his house; then Kurun Singh was then sewing a canvas bag, and he desired witness to take and sew it. Witness excused himself, saying he did not know how. — Kurun Singh

replied "If you will not sew, then take back your letter," which witness did. Next day they left Dum Dum together, when witness was speaking to the prisoner, the pony which is now here, was grazing near to some deserted huts. The prisoner was making a saddle bag, this is it. The sepoy was tall, his beard just growing, he was sickly and of darkish complexion. Witness did not learn the sepoy's name, said on hearsay that it was Khooblall.

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Questions by the prisoner.—When I left Dum Dum, did you see me go?

Answer.—I did not, I was asleep in my house.

Question.—How then have you said that another sepoy went with me?

Answer.—I said so, because I had in the morning seen the place where you had staid, empty.

Question.—Did you see that sepoy's red coat?

Answer.—I did not.

No. 15, witness Nursing Dutt Pundit. States that two men, the prisoner Kurun Singh and another, came in the evening to his house and staid all night. Next morning all three went to bathe together, and when undressing, Kurun Singh's companion laid down a net purse with money in it, on the bank. Witness told the man that to expose his money in this way was indiscreet. He replied, "In your presence there is nothing to suspect." So having bathed, he put up his money again, and all returned to the witness's house and had refreshment. Shortly afterwards the native quarter-master serjeant came, and inquired about the man. Witness said he was a sepoy, the serjeant reprimanded witness for keeping people in his house, and desired him to turn them out, which he did. The prisoner then went to the serjeant-major, by whose direction he was put into a house in the lines of No. 1 Company, where he remained one or two days. The prisoner had a Burmese weapon with him. It resembled a "*gupti*," the prisoner said that he and his companion had come from Burmah. The prisoner's companion was of darkish complexion, his beard beginning to grow, he was tall and appeared to be sickly. Witness saw the two men living together in the lines of No. 1 Company. When they came to witness's house, each had a bundle, they were of different castes.

Question by the prisoner.—How did you know about dark and red coats?

Answer.—I was told by yourself that he was a red coat sepoy.

No. 16, witness Hurnath Singh sepoy. States, that one day at Burkutta, having eaten his food at noon, he was rubbing his plates when the prisoner came up and asked "Are you a sepoy?" witness answered that he was of the 13th regiment at Dinapore, and in turn asked him to what regiment he belonged. He said he was an artillery man, and of Dum Dum, but was now coming

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from Rangoon. His home he said was in Deghora, and that he had sick leave. Witness asked him about Rangoon, he said it was all good. Afterwards in the evening, witness in search of porters went to the shop where the prisoner was staying, and saw there the prisoner and another sepoy, to whom witness spoke and asked where he lived, and to what regiment he belonged. He said at Sobarna, and that he belonged to the 67th regiment, and was going home on sick leave. Witness and the others, all three, sat together for some time conversing. The prisoner said that his name was Purgas Singh, and he shewed a Burmese weapon, a "*gupti*," which he said he had brought from Rangoon. Witness after awhile went away, and next morning marched into Burhee, where he heard that a sepoy had been murdered. Witness told what he knew to the deputy magistrate, but on being taken to see the body, could not recognise it, because the sepoy whom he had seen was lean and sick, whereas the body was much swollen. The two men came walking together driving a laden pony. The Sobarna man was sick, his beard was not full grown.

Questions by the prisoner.—Did you see me and the other man in the shop, or on the road ?

Answer.—I saw both coming on the road, and again in the shop.

Question.—When marching from Burkutta to Burhee, did you see any blood on the road ?

Answer.—Many persons were looking at blood on the road, but I did not go near.

In reply to the court, witness had not any previous acquaintance with the prisoner.

No. 17, witness Jowahir, No. 18, witness Mahadeo ; state that Meghnath Koormee, son of Rusharam, aged about twenty-four, and of a darkish complexion enlisted at Dinapore and went with his regiment to the eastward. They knew not what has become of him. These are both residents of Sobarna.

No. 19, witness Busrawn Singh, No. 20, witness Bheekun, No. 21, witness Bustee Singh—These witnesses state that the prisoner is a man of bad character, that he has consorted with ill-behaved persons, and was once sentenced to six months' imprisonment for a false complaint, and that while yet a lad, he stole from his master Jafer Ali darogah, a "*surpouse*" and a watch ; on being reprimanded, he gave up.

The following original letters are filed with the sessions record. Their purport was explained to the jury and to the prisoner before taking his defence.

No. 176. Service.

Rangoon, 28th August, 1853.

SIR,

In reply to your letter No. 392, of 1853, to the address of the Brigade Major at Rangoon, I have the honor to report that on

receiving charge of this office, I proceeded to make the enquiries called for.

1854.

Annexed is a letter No. 129, dated 19th instant, from Lieutenant Bosworth, commanding the Bengal Artillery here, from which it appears that the suspected party Kurun Singh is a private in the 5th company, 9th battalion, artillery, and that he left Rangoon on sick leave on the 6th of June last. From the 10th regiment Bengal Native Infantry (the only complete corps here); it appears no men went on leave on that date.

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Depôts of the Bengal native corps in Burmah (the 40th, 67th and 4th Sikh locals) are formed here, but as the Sikhs are sent from the head-quarters of their regiments at Prome, reports are merely made there of the dates of their leaving and no records kept.

The non-commissioned officer of the 67th regiment native infantry depôt, states to me that Meghurrin Ram sepoy, alluded to in paragraph 4 of your letter, left this on the 6th of June last, sick for his home; that he is not acquainted of there being any such man as Ruttoo in the regiment.

The Naik also tells me that several sepoys of the regiment, lately returned from Hindustan (since gone on to Prome), mentioned to him that Meghurrin Ram had been murdered. I only allude to this, as pointing out the probability of this being the murdered man. I regret I am unable to forward you his descriptive roll, but the officer commanding the 67th Regiment N. I. will doubtless have furnished you with it.

I have, &c.

(Signed)

A. N. COLE, *Lieut.*

Offg. Major of Brigade.

To A. A. Govr. Genl. S. W. Frontier, Hazareebagh District.
No 129.

Rangoon, 19th August, 1853.

SIR,

In reply to your letter No. 171, dated Rangoon, August 17th, 1853, I have the honor to state that private 2,677 Kurun Singh of the 5th company, 9th battalion artillery left Rangoon on sick leave to his home, June 6th, 1853, and that no other sepoy belonging to the Bengal artillery accompanied him. As far as I can find out, he had not much money with him when he left this place, but he had a letter from me to the adjutant 9th battalion artillery, regarding some money remitted by him, some months' previously which had been returned to Dum Dum; it is therefore most probable that he was given the sum of rupees thirty at Dum Dum by the adjutant of the battalion.

I have, &c.

(Signed)

J. H. BOSWORTH,

Comg. 5th Co., 9th Battn. Arty.

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No. 233.

— To the Brigade Major, Rangoon.

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Prome, 27th September, 1853.

Case of SIR,

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alias PURGAS
SINGH, sepoy.

In reply to your letter No. 468, dated 20th ultimo, I have the honor to inform you, that your previous communications Nos. 380 and 393, of the 28th June, and 5th July, 1853, were replied to by letter No. 196, of the 8th August, 1853.

The sepoy alluded to, Meghurun Raoot belonged to the Gr. Company of my regiment, and is not present with the corps; he left Rangoon on sick leave for eight months on the 6th June last, and has not since been heard of. The remitters of several of the letters mentioned in the Persian list, which accompanied your letter of the 5th July, belong to the regiment, and were with the depôt at Rangoon, when Meghurun Raoot left it; as they are still there, I am unable to give you their direct evidence as to having entrusted letters for delivery to the above sepoy, but their testimony has been applied for, and immediately it reaches head-quarters, I will communicate it to you, with any other particulars I may learn, tending to elucidate the case.

I have, &c.

(Signed)

N. STURT, *Lieut.-Col.*

Comm'dg. 67th Regt. N. I.

To the Offg. Asstt. Govr. Genl.'s Agent, Hazareebagh.

No. 267.

Prome, 30th October, 1853.

SIR,

In continuation of my letter No. 233, of 27th September, I have the pleasure to forward the evidence of Sewsurn Pundie sepoy, 5th Company, and Bhageerutty Raoot sepoy, 6th company of the regiment under my command, and to acquaint you that several sepoys of the 10th regiment N. I. stationed at Rangoon, in June last, entrusted letters to Kurun Singh Golundauze, for delivery at their homes, on his proceeding on sick leave.

Evidence of Sewsurn
Pundie sepoy, 5th com-
pany 67th Regt. N. I.

In June last, I went to Calcutta with Meghurun Raoot, sepoy, Gr. company and Kurun Singh, Golundauze artillery, who were proceeding on sick leave. On arrival in Calcutta, I went to Barrackpore with Meghurun and Kurun Singh, who agreed to buy a *tattoo* between them; Kurun Singh had a *dao* (Burmah sword) and a broken musket barrel; Meghurun Raoot had some money and some letters from sepoys of my regiment; Juggernath Singh sepoy 7th company (now at Rangoon) and a coolie in the General Hospital, Rangoon, gave him each a letter.

I was present at Rangoon, when Meghurun Raoot Gr. Company and Kurun Singh Golundauze went on leave. I gave the latter a letter to be delivered at my home, Sirpoor Ghat, Khas-

poor, Phoolwaria, Patna, his home was five or six miles from mine in the Chupra district. 1854.

I have, &c.
(Signed) W. M. N. STURT, *Lieut.-Col.*
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The foregoing letters have not been proved by oral evidence. Of their authenticity, no reasonable doubt can be entertained. I have no hesitation in accepting them.

The prisoner in his defence says, that having obtained sick leave for eight months, he left Rangoon on the 6th June, arrived at Calcutta on the 14th June, and remained that night in the fort; next day having made some purchases in Calcutta, he came to Dum Dum, where he arrived at 6 P. M., and passed the night in his own house. Next morning he reported his arrival to the Havildar-major, and to the adjutant, from whom prisoner received Rs. 35* on account of a returned draft. On returning again to his house, prisoner found there his cousin Rampurtab Singh, sepoy of the 1st Company, 53rd regiment, who had come from Barrackpore. They ate together, and Rampurtab advised prisoner to purchase a pony for the road; so they went together, and purchased one for six rupees from a barber near Dum Dum. Then it being late, they came home and slept together. Prisoner said to his cousin, You will be reported absent from the regiment; but he said that the serjeant and the native captain of his company had given him two days' leave. Next morning the adjutant called the prisoner and gave him 35 rupees of his pay, and at noon that day, prisoner and his cousin went to Barrackpore, where they stopped for the night. Prisoner wished to start the next morning, but his cousin persuaded him to stay and eat, which he did, and then about 10 A. M. he left Barrackpore. His cousin accompanied him to Fulta ghat and thence returned. Prisoner went towards home and passed the night at Hooghly. Thus proceeding sometimes two and sometimes three stages daily, he one day reached Burhee, at about 3 P. M. The deputy magistrate was then in his office, on the north side of the road, and seeing the prisoner said to a chuprassee "Who is that passing by in a dark coat?" The chuprassee came and said, "Ho, young man, the gentleman calls you." Prisoner thought, that perhaps some European wished to ask some questions, so he went and found only some native officials and attorneys. The deputy magistrate asked him whence he was come, and whither going, to which he replied, that he was coming from Rangoon, and was going home. The deputy magistrate then asked, his regiment and name, to which prisoner answered that he belonged to the

* Rupees 30, according to Lieut. Bosworth's letter.

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5th company and that his name was Kurun Singh. All these answers were written down by the deputy magistrate, who, after a while, bade the prisoner to go his way. Prisoner then went on to Sikarwa, next day reached Bhalwa, and next Sahibgunge, which place he left at six in the morning and had proceeded about four miles, when he was stopped by a chowkeedar and burkundaz who asked many questions, to which prisoner answered, telling whence he came, and whither he was going. They then told him that the deputy magistrate of Burhee had sent for him, and after some words attempted to put leathern manacles on him, to which he objected, and at last gave them five (5) rupees each to desist. They brought him before the darogah and the magistrate of Sahibgunge, by whom he was sent under care of the police, station by station to Burhee, where the deputy magistrate, notwithstanding the remonstrance of his serishtadar, had the prisoner's arms bound, and so sent him to the darogah, Furzund Ally, by whom the bands were removed, and the prisoner kindly treated. After the prisoner's answer had been taken, his property was sent by the deputy magistrate for examination by the darogah. It was examined in the prisoner's presence and a receipt of what purport prisoner does not know, which had been put in by the deputy magistrate to make out the case, was found. Prisoner was again brought before the deputy magistrate, by whom he was again bound, and thus put to the questions; his answers being garbled to suit the purpose. Three days he was kept bound, and then was put in hand irons, weighing six pounds, and leg irons, weighing fourteen pounds, as is known to the darogah and the burkundazes of the police station. Of the hand and leg irons, one of each is in the police station, and the blacksmith who made them knows of them. For ten weeks the prisoner was made to labor continually, in the construction of a guard room for the prisoner under trial, as is known to the prisoners with whom he labored. The deputy magistrate formerly lived at Dum Dum, and prisoner while acting as orderly to the commanding officer, had by his order, laid hands on the deputy magistrate and turned him out of the enclosure of the commanding officer's house, wherefore the deputy magistrate has enmity towards the prisoner.

The jury whose names and occupations are entered below,* find the prisoner *not guilty*.

I cannot concur in this verdict. The evidence against the prisoner is indeed purely circumstantial, but is nevertheless of great cogency. It is proved that the prisoner and a sepoy named Meghurun Raoot, of the grenadier company in the 69th

* Lalla Peyarijall, Mokhtar.
Lalla Aditsahye, ditto.
Lalla Bhyrodial, ditto.

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N. I., left Rangoon together on the 6th June, and that the prisoner and Meghurun Raoot were together on the way to Barrackpore. Up to this point the identity of the prisoner's companion is established. It is proved that the prisoner and a sepoy of the 67th, were companions together at Dum Dum and at Burkutta; that the prisoner and the said sepoy left Burkutta together, on the morning of the 25th June; that the body of the said sepoy was found murdered on the road that same morning; that the prisoner had with him prior to the murder, an instrument with which the murder might have been committed; that the prisoner had with him such a weapon after the murder; that a receipt for money remitted by Meghurun Raoot, sepoy of the 67th N. I. was found with the prisoner, and that Rs. 78, were found with the prisoner. The inferences from these facts are, that the sepoy of the 67th, who was with the prisoner at Dum Dum and Burkutta, and who was murdered, was Meghurun Raoot, sepoy of the 67th N. I. and that he was murdered by the prisoner. Some minor circumstances deserve attention. There was found with the prisoner a sepoy's red coat. From this, the buttons and lining are torn away, but the facings are yellow, the facings of the 67th regiment. There were also found with the prisoner, some percussion caps, such as are used by sepoys, and are not used by artillery men.

The prisoner has not, in his defence, offered any thing to rebut the facts and inferences against him. Before this court he has avoided any reference to the murder. His defence in short is, that he had got at Dum Dum 70 rupees, and that the receipt, said to have been found among his property, was put there by the deputy magistrate, who bears him ill-will, and who, previous to the prisoner's apprehension, had obtained from the prisoner himself, the information necessary to a successful pursuit. Before the deputy magistrate, on the 1st July, the prisoner denied that he had a companion on the way, or at Bunsee's shop; as to the receipt, he said that it was given to him by a sepoy of the 67th regiment N. I.; as to the coat, that he got it from a sepoy of the gillis (1st N. I.) regiment (the facings of which are white); and as to the percussion caps, that he had picked them up during the war.

The prisoner is charged with highway robbery and murder. The proof of robbery is not complete, unless the receipt and the excess of money above Rs. 70, found with the prisoner, be taken for proof. No article of the property found with the prisoner is proved to have belonged to the murdered man. On a careful view of the case, I find the prisoner Kurun Singh, alias Purgas Singh, guilty of wilful murder. The jury has found the facts to be as above stated, but would acquit the prisoner, because there was no eye-witness of the murder. This is not a sufficient rea-

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son for acquittal. Strong circumstantial evidence has been held enough to justify a capital sentence; but though I deem the evidence in this case to be perfectly conclusive, I do not think that a capital sentence should be passed. I therefore recommend that the prisoner be sentenced to imprisonment for life with hard labor in irons, and in transportation.

The proceedings of the deputy magistrate have occupied much time, but this could not be avoided, and I consider that his prompt inquiry in the first instance, and the intelligent use made of the facts then elicited, are highly commendable. The two men who apprehended the prisoner have also performed their duty in a satisfactory manner.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick). The circumstantial evidence is very strong, and rendered doubly so, by the total denial of the prisoner of all knowledge of the murdered man; who, it is clearly proved, accompanied him on leave from Rangoon; was with him at Dum Dum; was with him at Burkutta, and left with him on the morning of the very day in which his body was found on the road, the head severed from it.

The court, therefore, in concurrence with the deputy commissioner, convict the prisoner of wilful murder on violent presumption; and sentence him to transportation for life, as recommended.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

Shahabad.

1854.

GOVERNMENT AND MUSSUMAT DHOOPPEAH,

versus

RAMPHUL PONEEAH.

February, 28.

Case of
RAMPHUL
PONEEAH.

CRIME CHARGED.—Rape on the person of Mussumat Dhoopeah, the prosecutrix.

Committing Officer.—Mr. H. Richardson, officiating magistrate of Shahabad.

The prisoner accused of rape was acquitted by the Nizamut in dissent from the sessions judge and law officer, the evidence for the prosecution not being believed.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 8th February, 1854.

Remarks by the sessions Judge.—The facts of the case are these. Three eye-witnesses* depose to having seen the prisoner in the act of violating the person of the prosecutrix.

The prosecutrix herself is a young married woman, but living with her mother, she gives a clear and confident account of the outrage, and her statement is confirmed by the witnesses.

A delay of some days occurred before the complaint was preferred before the magistrate, but the prosecutrix, it appears, laid her charge immediately before the darogah.

The defendant pleads not guilty, and alleges that the prosecution has been got up as a counter-charge to one which he had preferred, against the relations of the prosecutrix, of assault with wounding.

The prisoner, it appears, *was wounded* and prosecuted the parties, but his complaint was dismissed by the magistrate, the witnesses' testimony being contradictory. He gives evidence before the court to the same effect, but in my opinion the circumstance corroborates the story of the rape. The account given of the assault is unsatisfactory, and I doubt whether it was witnessed by those who depose to it. My own view of the fact is, that it was committed in consequence of the rape.

No other defence is attempted, the *futwa* convicts the prisoner and declares him liable to *akoobut*.

Under all the circumstances of the case, I would recommend that the prisoner be sentenced to seven years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The crime is said to have been perpetrated on the 12th November. It is not clear that information was given at the thannah at all. The prosecutrix's own statement, (only, however, in the sessions court, and not before the magistrate) is, that she complained at the thannah two or four days after the event, when she was referred to the magistrate. If she had done so, an entry would have been made in the thannah diary. Moreover, if a complaint had been formally laid, the darogah must have inquired into it, as he had authority to do by Construction 1365, or at least he would have reported for orders. It is the more doubtful whether the prosecutrix complained at the thannah, for the darogah, in reporting on Ramphul's charge of assault, makes no allusion to her charge, nor in his report on this particular case when directed to enquire into it. It is to be considered, therefore, that prosecutrix made no charge till she appeared before the magistrate, on the 23rd November, or eleven days after the alleged occurrence. She then accused Surubeet Roy as well as the prisoner of having violated her, saying in her petition that the act was first committed by the former; but in her deposition that it was done first by the latter; she speaks also of both being present together, and yet her witnesses swear that they only saw the prisoner.

Not being satisfied of the truth of the charge, from the delay in preferring it and from the contradictory statements of the prosecutrix and her witnesses, I acquit the prisoner and direct his release.

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Case of
RAMPHUL
PUNEAH.

SUMMARY CASES.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT,

versus

MOHUN DOSS, HAREEA BHOODE AND OTHERS.

Cuttack.

1854.

This case was referred to the Nizamut Adawlut, under Section V. Act XXXI. of 1841, and Circular Order of the Nizamut Adawlut, dated 18th March, 1842, by Mr. M. S. Gilmore, sessions judge of Cuttack, on the 14th January, 1854, with the following report.

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Case of
MOHUN DOSS
and others.

The riot took place contiguous to mouzah Tulleah, on either side of the Bengah river, forming the boundary of the Balasore and Cuttack districts, and it has been assumed by the deputy magistrate, that it emanated in an attempt on the part of Sohodeb Chowdry and Joydeb Punda, zemindars of talook Tulleah, to dispossess Mohun Doss *chela* of Mohunt Soodersun Doss from the Ram Bagh Muth, situated in mouzah Tulleah, to which Mohunt Soodersun Doss lays claim under a deed of gift (a very suspicious document) which he alleges Mohunt Seetaram Doss, the late proprietor of the *muth*, executed in his favor at Pooree, on the 22nd Dhunoo (Poos) 1257, corresponding with the 3rd January, 1850. Whereas the wounded persons, on the part of the above named zemindars, and likewise their gomashta, Adheekanth Mhaintee, distinctly deny that such was the case, and state that the riot took place in consequence of Mohun Doss having collected a large body of armed men, to prevent the sale of the property of certain *thannee* ryots of mouzah Kutkutta, the property of Mohunt Soodersun Doss, which the zemindars of Tulleah had attached on account of the rent of some *paie* lands cultivated by the said ryots within their zemindarry. But what the real cause of the riot was, I am unable, in consequence of the omission on the part of the deputy magistrate, to make any enquiry into the statement of the zemindar's people, though its correctness or otherwise could have been easily ascertained by examining the canoongoe, to whom it is said the zemindars had applied to sell the attached property. However, as it is stated in the final report of the police, bearing date 15th May, 1853, that Mohunt Ram Gopal Doss was in attendance at the magistrate's court at Bhudruck to answer a charge of breaking a burkundaz's spear, on the date of the occurrence, and stoutly affirms in the Act IV. of 1840 case, instituted by the deputy magistrate to ascertain who was in possession of the *muth* when the riot took place, that he has held possession ever since the demise of his *gooroo*, Mohunt Seetaram Doss in 1259, it does

The Court declined to interfere where the sessions judge under Sec. 5, Act. XXXI. of 1841, applied to the Court to quash the proceedings of the deputy magistrate, who had convicted certain prisoners of affray attended with wounding, whereas the judge on the evidence taken, considered homicide to be proved.

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not appear to me at all probable that, the zemindars, however much they might be induced to favor or side with Mohunt Ram Gopal Doss, would collect people to dispossess his adversary during his absence from the mofussil.

Moreover, the investigation held by the deputy magistrate in the Act IV. case, (still pending in appeal before this court, in consequence of my having been compelled to call for other cases connected with the dispute, regarding the Ram Bagh Muth) in no way removes the doubt as to the real cause which led to the riot, or shows who was actually in possession of the *muth* previous to its occurrence, though the greater body of the evidence tends to favor the claim of Mohunt Ram Gopal Doss. For it appears therefrom, that disputes have been pending between Mohunt Ram Gopal Doss and Mohunt Soodersun Doss, since the beginning of 1251, and that during the interval that has elapsed, not only have decrees for rent been passed by the deputy collector of Bhudruck in favor of both parties, against the cultivators of the land belonging to the disputed *muth*, but both parties hold receipts from the zemindars for the rent (of different years, those in the possession of Ram Gopal Doss being the most recent), of the resumed lakhiraj lands appertaining thereto.

But the question immediately before the court, is the fact of riot attended with homicide, and severe wounding having taken place and the manner it has been dealt with, and not the cause which led to it, and the following are my reasons for submitting the case for the orders of the superior court.

First. Because it being perfectly clear, that the case was one of riot attended with homicide and severe wounding with swords, and that the deceased Pandub Jenna was killed either by Mohun Doss or his syce, Hareea Bhoosee. The deputy magistrate had not the power to dispose of it and should have committed the parties concerned, to the sessions; instead of which, he sentenced the abovenamed defendants, being principals, to six months' imprisonment, and the remaining defendants to two months each without labor. Bhujjan Swaine, Bheekarry Mhaintee and Bhuggy Raot affirm that they were a few beegahs distant from the spot, where the deceased was cut down and where his body was found by the police two or three hours after the occurrence, and depose distinctly that they saw Mohun Doss and Hareea Bhoosee on horseback, with swords in their hands, together with certain others on foot with sticks, pursuing the deceased and some of his party; and that on their coming up with the fugitives, Mohun Doss inflicted the fatal wound with his sword on the deceased's head, and some of the others struck him with their sticks; but some doubt may be entertained as to the fact of their having witnessed which of the two defendants armed with swords inflicted the wound, as they did not mention the circumstance to the police until they had been cited as witnesses.

to the fact by Anunt Mhaintee, the gomashta of Sohodeb Chowdry and Joydeb Panda, the zemindars on whose part the wounded men were assembled at Tulloah, though they had previously been in attendance before the police. However, the witnesses generally depose that both Mohun Doss and Hareea Bhooee pursued the zemindar's people, among whom was Pandub Panda, in the direction of the village of Doldunda, in the *bheel* or *maidain* of which Pandub Jenna's body was found, about a quarter of a mile distant from the Bengah river, where the riot commenced; and no doubt whatever can exist in what way the deceased met with his death.

Secondly. Notwithstanding the case occurred on the 24th April, 1853, and the principal parties concerned therein, viz., Mohun Doss and Hareea Bhooee, were arrested on the following day by order of the deputy magistrate at Bhudruck, whither they proceeded a few hours after the occurrence, and others were also apprehended in the mofussil on the 25th and 26th, and forwarded to the sudder station, which is only seven coss from the place of occurrence, on the 28th idem, no record whatever of the case was entered in the statements for April, and in those for May and subsequent months; it was only inserted in the English statement No. 1, under heading No. 32, as an "affray or riot with violent breach of the peace." However on referring to the vernacular returns for Cuttack, (the case was first entered in the Cuttack statements and transferred to Balasore in June,) for May, I find that mention of the homicide is there made.

Thirdly. I regret to have to point out that certain facts exhibited in the record, viz. that of the defendants Mohun Doss and Hareea having proceeded on horseback with so much despatch on the night of the occurrence to Bhudruck, where they arrived early the next day; the evidently incorrect report of the native doctor as to the extent of the wound on the head of the deceased, Pandub Jenna, and the manner in which he came by his death, as manifested by the general circumstances of the case; the evidence of the witnesses and the statement of the thannah mohurrir, who was irregularly examined without being put on his oath; the total omission to examine the native doctor, regarding the correctness of his report, or institute any enquiry into the assertion of Mohun Doss defendant, to the effect that he died of cholera; the significant warning communicated to the deputy magistrate by the police darogah of Jhappore and the jemadar of Bhudruck, (see their report of the 15th May concluding sentence,) who conjointly investigated the case after the mohurrir of the former thannah, who commenced the investigation in so creditable a manner, was summoned to Bhudruck to be questioned as to the discrepancy between his and the doctor's report, regarding the wounds received by Pandub Jenna, and afterwards suspended, because there was some delay in his appear-

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ance; and finally the reluctance evinced in forwarding the record of the case instituted by order of the deputy magistrate, under Act IV. of 1840, with the view to settle the fact of possession on the Ram Bagh Muth, the right to which was supposed to be the cause of the riot,—the same not having been transmitted to this court as usual on the appeal of the mookhtear of the party cast; an application having been made to this court on the 6th October, to know whether the appeal was to be received through the mookhtear, though the said mookhtear conducted the original case (Act IV) on the part of his client, Ram Gopal Doss, in consequence of which, the record of the Act IV. case did not reach this court until the 13th, and that of the affray case until the 27th December,—all tend to corroborate what has frequently been asserted by prisoners on trial before this court, and what I have had reason to suspect was the case from information that has reached me through other sources, viz. that Roopnarain Dutt, the serishtadar of the deputy magistrate's court, exercises too much influence over the general proceedings of the court and that he is not what he ought to be; and I consider it in every respect desirable that he should be removed to another office at all events.

It will also be observed, on examination of the record, that by far the greater portion of the depositions of the witnesses were not certified till two, three and four days after they commenced, and though many of them were evidently not all written on the dates on which they were commenced, they bear no intermediate dates.

It does not appear to me necessary to furnish any abstract of the evidence in this case, as the record is submitted for the Court's perusal, and it all uniformly tends to establish the fact that Pundub Jenna was killed in the riot, and the circumstance of blood being visible on the two swords which were taken by Mohun Doss and Hareea Bhooee to Bhudruck, and produced from the "Sudaburt Muth" at that place after their apprehension, corroborates the evidence of the witnesses to the effect that they were the persons who killed Pandub Jenna, and wounded certain other persons among the zemindar's party.

As regards the native doctor's report, to the effect that Pandub Jenna died a natural death, I can only state that I consider it most fully refuted by the evidence and the general circumstances of the case; and although the deputy magistrate has been misled, and induced to credit it, in consequence of but little blood having flowed from the wound on the deceased's head, I beg to state that I have ascertained by conference with Doctor Scott, the civil surgeon of Cuttack, that the fact of the paucity of blood, which was seen by the witnesses about the wound on the head of the deceased, is confirmatory of the circumstances described by the witnesses; for he informs me, that in the case of a person being suddenly

killed by concussion of the brain, produced by a blow or violence, but little blood would probably flow from the wound, though blood might afterwards issue from the mouth and nose, when the body was placed in a position to admit of its doing so, as in the case of the deceased, his body having been laid out on a *machan* with the face downwards; and that these symptoms, the issue of blood from the nose and mouth, would not be manifest in the body of a person who had died a natural death.

Where the skull was produced from, that was exhibited to the witness at the trial, or whether it was the skull of Pandub Jenna, there is nothing in the record to show. But whether it was the identical skull or not, I beg to observe that the questions put to the witnesses, as to whether they saw the wound on a bare skull, which they had seen on the head of a fresh body with the flesh and hair attached, appeared to me quite absurd.

The sentence of six months' imprisonment passed on Mohun Doss and Hareea Bhojee will expire on the 9th February, and lest the orders of the Court should not be received by that time, I have directed the magistrate of Balasore to call on them to furnish bail, Mohun Doss in the sum of rupees two thousand and Hareea Bhojee one thousand, to remain in attendance until the Court's orders are known, or in default of their furnishing the same, to keep them in the *hajut* guard.

Should the Court approve, I beg to suggest that either the magistrate of Balasore or Cuttack be instructed to reinvestigate the case afresh, in order that real circumstances which led to the riot and homicide may be ascertained. Mohun Doss and Hareea Bhojee, as well as the parties concerned on their side, are residents of Balasore side of the Bengah river, but Pandub Jenna was killed in the Cuttack district.

Resolution of the Nizamut Adawlut. No. 157, dated 18th February, 1854.—(Present: Sir R. Barlow, Bart.) The Court, having perused the papers above recorded, connected with the case of Mohun Doss and others, find that the deputy magistrate places no reliance on the evidence of the eye-witnesses, and that he is not satisfied with what has been brought forward to prove that Pandub Jenna met his death in the affray. He therefore convicts the prisoners of being concerned in an affray attended with wounding, and has sentenced them to six months and two months respectively. This was within his competence under Regulation VIII., of 1828, as he did not consider homicide proved.

The sessions judge refers the case under Section V. Act 31, of 1841. His impression of the guilt of the prisoners is founded on a very different view of the evidence of the eye-witnesses, and of the value to be attached to the opinion of the native doctor as to the cause of death.

The deputy magistrate may not have exercised a sound dis-

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1854. cretion in dealing with the case, his judgment of the evidence and the weight due to it, may, in the opinion of the sessions judge, have been faulty, but there is no sufficient ground for quashing all the proceedings and directing that a fresh investigation be entered upon by other magisterial authorities. A difference between officers, under the circumstances referred to in this case, must frequently occur, but the Court would only interfere in very extreme cases, in which clear and indisputable proof of defect of judgment may be apparent upon the record.

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PRESENT :

SIR R. BARLOW, BART., *Judge.*

PEEROO CHOWKEEDAR,

versus

Sylhet.

HURENARAIN DHUR.

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DHUR.

Regulation
VII. of 1819,
is not appli-
cable to village
chokedars and
the realization
of their wages.

This case was referred to the Nizamut Adawlut, under Section 5, Act XXXI. of 1841, and Circular Order, dated 18th March, 1842, by Mr. F. Skipwith, sessions judge of Sylhet, on the 8th February, 1854, with the following report.

On the 30th of April, 1853, one Peeroo, a village chowkeedar, applied to the magistrate for his salary, and gave in a list of persons from whom he considered that he ought to receive it. The magistrate referred the petition to the darogah, who deputed a burkundaz, who reported that the claim was good and the sum of rupees 9-8, was consequently realized from the petitioner and others.

On the 15th June, the petitioner and others complained to the magistrate, that rupees 7-8 had been exacted from them by the burkundaz, some enquiry was made by the magistrate, but no orders were passed. A petition was again presented on the 10th of November, and on the 22nd, as the petitioner was absent when called for, his petition was rejected and on the 8th of December, the case was finally disposed of by being placed among the records.

From this order, the appellant has appealed to me, but I am unable to pass orders. I, however, called upon the magistrate for explanation* and transmit it with the case.

* From the officiating magistrate of Sylhet to the sessions judge of Sylhet, No. 38, dated 4th February, 1854.

In reply to your roobocaree of the 21st January, 1854, I have the honor to report as follows.

On the 30th April, 1853, Peeroo Chowkeedar gave a petition to the magistrate for wages due, and the darogah was ordered to collect the amount.

The realizing the salaries of village chowkeedars is illegal, but the remedy applied by the acting magistrate is still more so, for, Regulation VII. of 1819, applies only to domestic servants. No one, however, has appealed to me and I am therefore unable to interfere; I have merely pointed out the illegality to the acting magistrate.

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The darogah deputed a burkundaz who collected and paid to the chowkeedar Rs. 9-8. The "*bakydars*" then gave a petition that the burkundaz had "*zubur dusty*," taken more money than was due and that the chowkeedar was useless. The case was proceeded with and on the 27th September, the sudder ameen called for a *kyfeut* from darogah, as to the efficiency of the chowkeedar and the truth of the complaint made by Hurenarain. After this again on the 10th November, this Hurenarain gave another petition to me and as on calling up the case for decision on two separate occasions, the petitioner was absent, the case was struck off the file on the 8th December; from this order of mine, the appeal was made and the explanation called for from you.

The system existing in this district as regards the village chowkeedars is most injurious, and until it is put on some proper footing and some better law formed for their regular payment, I fear that it will be of great difficulty to find a chowkeedar of the slightest benefit. The efficiency of the servant must in a great measure depend upon the sure payment he receives from his master, and as long as the chowkeedars are the mere paid (or rather I should say unpaid) servants of the zemindars, I cannot see how they can be rendered efficient. There seems to me to be a total want of energy among them, and I have even found them in the sudder station (with their *chupprass* and *pugry*) and on questioning a man on one occasion he told me his zemindar had sent him in with revenue!!! Before I took charge of the magistracy, the plan was as you have seen in the case in question, for the darogah on receipt of orders from the magistrate, to depute a burkundaz to collect the dues claimed by the chowkeedar. Mr. Mills on his arrival pointed out the irregularity of this proceeding and it was consequently put a stop to, but what are the consequences? since I have been in charge no less than 79 petitions have been presented to me by chowkeedars for salary due, while many have resigned. On calling upon chowkeedars (village) for an explanation for neglect of duty, their one and only reply is, that as a stop was put to the practice of collecting their salaries they were no longer required, (so their zemindars tell them) for if they could obtain no pay, what was the use of their being chowkeedars any longer. I tried for some time to obtain payment by threatening the zemindars with the full swing of the law for neglect of zemindaree duties; this would not answer, so I have tried taking the evidence of the chowkeedar on oath (with his list of recusants) under Regulation VII. of 1819, and then by serving a notice on them through the nazir, calling upon them to pay in so many days or to give their reasons either in person or by mooktear; this has succeeded in some, but not in all cases, but I hope in time to re-establish their (the chowkeedars') confidence and put them again on a proper footing; at present they are all, from the idea of their receiving no payment, almost I may say useless. I would therefore beg for some more distinct course to be laid down for the guidance of the magistrate in these cases, or some new regulation, for the payment of the village chowkeedars. Were they to be placed more immediately under the magistrate, than they are, I mean that is to say, were they to look to the Government for their pay instead of to the zemindar, whose servants they are, much good might be derived from them, and I feel con-

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The amount realized from the petitioner by the darogah, under the magistrate's order, ought to be refunded, and I trust the court will direct the magistrate to abstain from the illegal application of Regulation VII. of 1819.

Resolution of the Nizamut Adawlut. No. 154, dated the 18th February, 1854.—(Present: Sir R. Barlow, Bart.) The Court, having perused the papers above recorded, connected with the case of Hurenarain Dhur, petitioner, observe that Regulation VII. of 1819, does not apply to chowkeedars, and the realization of their wages under that law being irregular, the practice must be stopped. In the case immediately under reference, no further steps can be taken, no appeal is before the Court, nor was any preferred to the sessions judge.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

Dacca.

HUREEPERSHAD ROY AND OTHERS, PETITIONERS.

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Case of
HUREEPER
SHAD ROY and
others.

This case was referred to the Nizamut Adawlut, under Section V. Act 31, of 1841, and Circular Order of the Nizamut Adawlut, dated 18th March, 1842, by Mr. A. Sconce, sessions judge of Dacca, on the 15th February, 1854, with the following report.

On the 28th October, 1853, the deputy magistrate of Manickgunge required Hureepershad and others to find security for their good conduct for one year. All the parties so sentenced appealed within the prescribed time, except Fedoo, and as I held the deputy magistrate's proceedings to be irregular with respect to the other parties, I think his order with respect to Fedoo also should be reversed.

A prisoner imprisoned as a budmash released, although he had not appealed, the proceedings of the deputy magistrate having been irregular and illegal.

My objection to the deputy magistrate's proceedings, was not that there was no reason to be suspicious of the mode of life of the persons whom he had apprehended; but that the manner in which he proceeded to enquire into the matter was irregular and illegal.

ident that crime would be diminished; for then they would have a fixed instead of a fluctuating salary as at present. To do this they might be paid either in the same way as the chowkeedars of the sudder station, (every man's beat generally amounting to, on an average, sixty houses) by a tax; or else the pay of the chowkeedars might be included in the annual revenue of the zemindars paid to Government. My firm belief is, that if they knew that their salary was forthcoming, that it was a sure and certain thing, and that they were to look to Government for it instead of to the zemindars, then they would be an efficient body of men.

On the 9th June, 1853, the deputy magistrate, upon the petition of Joogul Shah, who alleged that stolen property would be found in the houses of the persons whom he named, ordered the darogah to enquire if Joogul Shah should appear and give a deposition to him on oath. Instead of Joogul Shah, Khoda Buksh attended on the darogah, saying that Joogul Shah was sick. Khoda Buksh stated his suspicions of the budmashes in question, and upon the reference of the darogah, the deputy magistrate, on the 24th June, ordered the suspected parties' houses to be searched.

It is this order and these proceedings I find fault with. There was virtually no complaint; no prosecutor; no intimation that any property had been stolen; but a mere general allegation that on a search, suspected property would or might be discovered. I think it was both injudicious and illegal to allow the investigation to be originated in this manner, and as already explained, I would beg to recommend that the order of the deputy magistrate, requiring Fedoo to find two sureties at fifty rupees each, to be answerable for his good conduct for one year, should be reversed.

Resolution of the Nizamut Adawlut. No. 181, dated the 23rd February, 1854.—(Present: Sir R. Barlow, Bart.) The Court, having perused the papers above recorded, reverse, under the circumstances reported by the sessions judge, the order of the deputy magistrate, requiring the prisoner, Fedoo, to find two securities at fifty rupees each to be answerable for his good conduct for one year, and direct that he be released.

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Case of
HUSEN-
SHAH ROY and
others.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

CASE No. 1.—HILAL GAZI,

versus

GHOLAM HOSEIN (No. 1, APPELLANT,) POCHA -GAZI (No. 2, APPELLANT,) DARA GAZI SONAR (No. 3,) TITA GAZI (No. 4, APPELLANT,) MOHABUDDIN (No. 5, APPELLANT,) KUMMURUDDIN (No. 6, APPELLANT,) SHOVAH GAZI (No. 7,) GOKOOL SHAHOO (No. 8, APPELLANT,) TAHIR MAHOMED SONAR* (No. 9,) SAMARUDDIN* (No. 10,) TAZAMUDDIN* (No. 11,) KANTIRAM MUGH* (No. 12,) AZIMUDDIN* (No. 13,) JOHURUDDIN* (No. 14,) KOKARAM MUGH* (No. 15,) AND MAHOMED ALI ALIAS ALI MIAN (No. 16, APPELLANT.)

CASE No. 2.—RAMKAUNTH NATH,

versus

RAMIZUDDIN* (No. 17,) MAHOMED ALI ALIAS ALI MIAN (No. 18, APPELLANT,) DARA GAZI* (No. 19,) TITA GAZI* (No. 20,) TAHIR MAHOMED* (No. 21,) AND SHEIK CHOONIE (No. 22.)

CASE No. 3.—GOBURCHAND POTDAR,

versus

SHEIK CHOONIE (No. 23,) AZIMUDDIN KAZI ALIAS AZIM KAZI* (No. 24,) AND MAHOMED ALI ALIAS ALI MIAN (No. 25.)

Tipperah.

1854.

CASE No. 4.—HARIS MAHOMED,

versus

SHEIK CHOONIE (No. 26, APPELLANT,) CHARROO JEMADAR (No. 27, APPELLANT,) MAHOMED ABID (No. 28, APPELLANT,) AND MAHOMED ALI ALIAS ALI MIAN (No. 29, APPELLANT.)

March 1.

Case of GHOLAM HOSEIN and others.

CASE No. 5.—NAHAR MAHOMED,

versus

MOHURRUM ALI,† AZIMUDDIN ALIAS AZIM KAZI RAMIZUDDIN KHONDKAR† AND MAHOMED ALI ALIAS ALI MIAN (No. 33, APPELLANT.)

Prisoners convicted in five several cases of dacoity, and sentenced to different terms of imprisonment in appeal one prisoner acquitted for want of evidence.

CRIME CHARGED. IN CASE No. 1.—1st count, Nos. 1 to 15, dacoity at night, attended with personal injury, in the house of

* Acquitted by the sessions judge.

† These prisoners were disposed of by the Court on the 11th February last, see page 193 of the printed reports.

1854.

March 1.

Case of
GHOLAM HO-
SEIN and
others.

Hira Gazi, the father of the prosecutor, and plundering therefrom property belonging to the said Hira Gazi and in his charge, valued at Rs. 2,487-7. No. 16, accessory before and after the fact to a dacoity in the house of Hira Gazi, the father of the prosecutor, attended with personal injury; 2nd count, Nos. 1 to 9 and 16, receiving and retaining in their possession, property obtained by the above dacoity, knowing it to have been such; Nos. 10 to 15, belonging to a gang of dacoits; 3rd count, Nos. 1 to 9 and 16, belonging to a gang of dacoits.

IN CASE No. 2.—1st count, Nos. 17 to 21, committing a dacoity at night in the house of the prosecutor, attended with the wounding of Pokon and beating of Dhonunjoy, Ram Surn and Rammohun, and plundering therefrom property belonging to him and in his charge, valued at Rs. 226-4-6. No. 22, privy to the above dacoity, attended with the wounding of Pokon and beating of Dhonunjoy, Ram Surn and Rammohun; 2nd count, Nos. 17 and 22, belonging to a gang of dacoits, Nos. 18 to 21, receiving and retaining in their possession property obtained by the above dacoity, knowing it to have been such; 3rd count, Nos. 18 to 21, belonging to a gang of dacoits.

IN CASE No. 3.—1st count, Nos. 23 to 25, committing a dacoity at night in the house of the prosecutor, and plundering therefrom property belonging to him and in his charge, valued at Rs. 370-1; 2nd count, receiving and retaining in their possession property obtained by the above dacoity, knowing it to have been such; 3rd count, belonging to a gang of dacoits.

IN CASE No. 4.—1st count, Nos. 26 to 29, committing a dacoity at night in the house of the prosecutor, and plundering therefrom property belonging to him and in his charge, valued at Rs. 286-10; 2nd count, Nos. 26 and 27, belonging to a gang of dacoits, Nos. 28 and 29, receiving and retaining in their possession property obtained by the above dacoity, knowing it to have been such; 3rd count, Nos. 28 and 29, belonging to a gang of dacoits.

IN CASE No. 5.—1st count, Nos. 30 to 33, knowingly uttering fabricated coin; 2nd count, fraudulently selling to the prosecutor two gilt rupees as gold mohurs, knowing them to be counterfeit.

CRIME ESTABLISHED. IN CASE No. 1.—Nos. 1 to 5 and Nos. 7 and 8, dacoity at night in the house of the prosecutor's father, Hira Gazi; Nos. 6 and 16, receiving and retaining in their possession property obtained by the above dacoity, knowing it to have been such.

IN CASE No. 2.—No. 18, receiving and retaining in his possession property obtained by dacoity, in the house of Ramkaunth Nauth, knowing it to have been such, No. 22, privy to dacoity in the house of the prosecutor, Ramkaunth Nath.

IN CASE No. 3.—No. 23, dacoity at night in the house of the prosecutor, Goburchand Potdar, No. 25, receiving and retaining in his possession, property obtained by the above dacoity, knowing it to have been such.

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IN CASE No. 4.—Nos. 26 to 28, dacoity at night in the house of the prosecutor, Haris Mahomed, No. 29, receiving and retaining in his possession property obtained by the above dacoity, knowing it to have been such.

IN CASE No. 5.—Nos. 30 to 32, aiding and abetting in knowingly uttering fabricated coin, No. 33, knowingly uttering fabricated coin.

Committing Officer.—Mr. E. Sandys, magistrate of Tipperah, Tried before Mr. H. C. Metcalf, officiating sessions judge of Tipperah, on the 22nd November, 1853.

Remarks by the officiating sessions judge.—This is the first of five cases, which are connected by one or more of the accused in each calendar, being included in the other calendars, and are made accordingly the subject of one report. I tried the cases Nos. 1, 2, 3 and 4, under Act 24 of 1843.

Case No. 1.—On the night of the 2nd June, a body of twenty or twenty-five men, provided with torches and *lattees*, attacked the premises of the prosecutor's father (who is a Mahajun and lends money on pledges) and plundered him of property valued at Rs. 2,487-7, partly in cash and partly in ornaments.

The enquiries, instituted by the police of this district, proved totally unsuccessful. Neither the dacoits nor any portion of the plundered property were discovered.

On the 7th June, two chowkedars of zillah Noacolly reported that certain bad characters, and among them one Tita Gazi, had left their home on the night of the 20th of Jeyt, it was supposed by their neighbours, on some doubtful expedition, and returned two days afterwards.

On the 9th of June, Tita Gazi himself volunteered, before the joint-magistrate of Noacolly, the following statement. Certain persons named by him had left their homes during the days indicated in the chowkeydar's report, and had returned, bringing with them a quantity of gold and silver ornaments, which in a few days afterwards, they had carried to a silversmith's to be melted down, but noticing him, they retired without effecting their purpose.

The joint-magistrate of Noacolly, who appears to have heard of the dacoity in this district, acted immediately on the information thus obtained, and sent a very efficient jemadar, named Matadin, to make the necessary local enquiries. His reports are fifteen in number, and I can only afford space for the general result. He considered that the prisoners, Tita Gazi (No. 4,) Dara Gazi (No. 3,) Pocha Gazi (No. 2,) Golam Hossein (No. 1,) Mahabuddin (No. 5,) Sumuruddin (No. 10) and Kummeeruddin

1854. (No. 6,) had been actively concerned in the dacoity. Teelok Doss, subsequently admitted as Queen's evidence, he held to have been an accomplice. These he forwarded to the joint-magistrate of Noacolly, placing the prisoners Tahir Mahommed (No. 9,) Tumuzuddin (No. 11,) Ayunuddin (No. 13,) and Kanteeram Mugh (No. 12,) under supervision, as none of the stolen property had been found in their possession, and they had made no admission of guilt.

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The darogah of the town of Comillah was now directed to complete the enquiry commenced by Matadin jemadar. He discovered a part of the stolen property in the possession of the prisoner, Shooah Gazi (No. 7,) and through the clue thus obtained, apprehended Gokool Shahoo (No. 8) and Mahommed Ali (No. 16.) The prisoners Johiruddin (No. 14) and Kokaram Mugh (No. 15,) were apprehended by the magistrate's order, the former being the brother of the prisoner, Jajirmuddin (No. 11,) the latter being the prisoner, Kanteeram Mugh's (No. 120,) brother and both being mentioned in the course of the mofussil enquiries.

Such are the circumstances, which led to the apprehension of the prisoners. I proceed to consider as briefly as is at all compatible with the nature of the cases, the amount of proof against each and the conclusion at which I have arrived, as to their guilt or innocence.

The amount of personal injury inflicted, appears to have been limited to a very slight use of their *lattees* by the prisoners. In that respect the case is certainly not one of aggravated dacoity. Neither the prosecutor nor any of the witnesses present, when the occurrence took place, pretend to have recognized any of the robbers, or to be able to say whether the prisoners were among them. The evidence for the prosecution, therefore, consists of the confessions of certain of the number, of the recovery and identification of a part of the stolen property and of the circumstantial evidence of the approver, Teelok Doss, and of Musst. Toofani (the prisoner Shooah Gazi's mother). The former deposed that he had heard of the commission of the dacoity by the prisoners, Nos. 1 to 6 and 9 to 13, and had been bribed by the prisoners, Nos. 3, 4 and 9, by a present of a *nuth* and some other property, not to reveal what he had thus learnt. The latter deposed to a meeting of certain of the prisoners at her son's house and their departure in company to attend, as they stated, the consecration of a *musjeed*. Returning late at night, she heard that their real occupation had been the commission of a dacoity, and received a few silver ornaments to ensure her silence.

The amount of proof against the prisoners may thus be set forth.

The prisoners, Nos. 1, 2, 3, 4 and 5, made full confession at the thannah of active participation in the dacoity, and each de-

livered up to the police certain articles of property, which they admitted had been obtained by dacoity, and the whole of which was identified as belonging to the prosecutor, with the exception of two bars of silver (made by melting a part of the ornaments) and some money, neither of which were of course recognizable, but which were included in the admissions of the prisoners, who are also mentioned in the evidence of Musst. Toofani and Teelok Doss. The prisoner, No. 6, was not examined at the thannah. Before the magistrate he denied the charge. His wife produced a pair of bracelets, stating that they were not her's, and that she was ignorant how her husband had obtained them. They were identified by six witnesses as being the property of the prosecutor.

The prisoners, Nos. 7 and 8, made full confessions, both in the mofussil and before the magistrate, and a portion of the stolen property was recovered from their possession.

The prisoner, No. 16, declares himself innocent, both in the mofussil and before the magistrate, but nine articles were found in his possession, all easy of identification and all identified but one, a newly-made silver necklace. This man was evidently the leading spirit of the gang.

The defence consisted of claims to the property and of evidence to previous good character. The former failed and the latter was of no avail against such evidence as was adduced against the prisoners, Nos. 1, 2, 3, 4, 5, 7 and 8, whom I convict on the 1st count of the indictment against them, the prisoners, Nos. 6 and 16, whom I convict on the 2nd count.

Case No. 2.—The clue to this offence was obtained through the confession of the prisoner, Shooah Gazi (No. 7 in calendar No. 1,) who then mentioned Mahommed Ali (prisoner No. 16, in calendar No. 1,) as the great promoter and instigator of dacoities. This led to further inquiry, in the course of which the prisoner, Sheik Choonie, (No. 22, of calendar No. 2,) who is the prisoner Mahommed Ali's peon, made a confession, which while denying active participation in this particular robbery, led to a discovery of a portion of the stolen property in the hands of one Hurokishto Potdar, which the latter stated had been pledged to him by the prisoner, Mahommed Ali, and which the prosecutor immediately identified as his own.

The prisoners pleaded not guilty.

The confession of the prisoner, No. 22, before the magistrate amounted to privity to the crime charged, but no part of the stolen property was found in his possession.

In the possession of the prisoner No. 18, (who denied his guilt throughout) no property was directly discovered, but two silver ornaments (part of the stolen articles) were proved to have been pledged by him to Hurokishto Potdar. They were duly identified as being the prosecutor's property.

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My remarks regarding the evidence for the defence, in case No. 1, apply to this case also.

The prisoner, No. 22, I convict of privity and the prisoner, No. 18, of receiving and retaining in his possession property acquired by dacoity. There was the slightest possible mark on the witness Pekun's head, which he said was the scar of a wound, but I am not of opinion that the dacoity was in fact attended with aggravating circumstances.

Case No. 3.—The clue to this case was obtained through the same individual, Sheik Choonie, No. 23, whose confession led to the apprehension of the prisoners in case No. 2. He stated that his master, the prisoner Mahomed Ali, having sworn him to silence, associated him with fifteen others in the dacoity at the prosecutor's house, the particulars of which he detailed at length. It was proved also that he had pledged a pair of bracelets (part of the stolen property) with the witness No. 236.

The prisoner, No. 25, denied his guilt throughout. The witness No. 255, produced four articles of silver ornaments, which he deposed that the prisoners Nos. 23 and 25 had pledged to him, a point admitted in the prisoner No. 23's confession. Three rough bars of silver and two necklaces, said to form a part of the stolen property, as having been made from ornaments melted down and obtained from the prisoner, Mahomed Ali, have not in my opinion been proved to form a part of the stolen property nor to admit of being so proved.

I convict the prisoner, No. 23, on the 1st count of the indictment against him, namely, committing the dacoity. The prisoner, No. 25, I convict of receiving and retaining in his possession property acquired by dacoity.

Case No. 4.—The clue to this case was obtained through the prisoner, Sheik Choonie, whose confession regarding it are very full, and enter at length with the details of the crime.

The prisoners, Nos. 27 and 28, also made confessions, both in the mofussil and before the magistrate, which render their participation in the crime unquestionable. Certain of the articles stolen were traced to the possession of the prisoner, No. 28, but none to that of the prisoner, No. 27. Mahomed Ali, No. 29 denied his guilt throughout, but two clothes were found in his possession, which there can be no doubt belonged to the prosecutor, and which the prisoner did not attempt to prove to be his own.

I convict the prisoners, Nos. 26, 27 and 28, on the 1st count of the indictment against them, namely, committing a dacoity and the prisoner, No. 29, on the second count, namely, receiving and retaining property acquired by that dacoity.

Case No. 5.—The prisoner, No. 33, proceeded in company with the prisoners, Nos. 30, 31 and 32 to the prosecutor's house and pleading a sudden demand for money, offered to sell him two gold

mohurs, for the genuineness of which the prisoner, No. 30 vouched. Ultimately the prosecutor agreed to give 32 rupees for the two coins, which proved to be sicca rupees washed over with gold.

The prisoner No. 30 confessed before the magistrate that he was present when the sale took place, but not that he was aware the coin was counterfeit. The prisoners Nos. 30 and 32 confessed in the mofussil only, the prisoner No. 33 denied throughout.

They pleaded not guilty before the sessions court, but the evidence for the prosecution appearing to me sufficient, I, in concurrence with the Mahommedan law officer, convict them,—the prisoner No. 33, of knowingly uttering fabricated coins and the prisoners Nos. 30, 31 and 32, of being accessories thereto.

Sentence passed by the lower court.—Ghulam Hosein, Pocha Gazi, Dara Gazi Sonar, Tita Gazi, Mohabuddin, Kummuruddin, Shovah Gazi, Gokool Shahoo, Charroo Jemadar and Mahomed Abid, each to seven years' imprisonment in banishment, with labor and irons, Mahommed Ali *alias* Ali Mian to fourteen years' and two years in lieu of corporal punishment, total 16 years' imprisonment in banishment, with labor and irons, being a consolidated sentence for five offences. Sheik Choonie to ten years' imprisonment in banishment, with labor and irons, being a consolidated sentence for three offences; Mohurru Ali, Azimooddin *alias* Azim Kazi and Ramizooddin Khondkar, each to three years' imprisonment and to pay a fine of 50 Rs. or in default to labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The only prisoner, of those appealing, against whom the proof seems to me deficient is Kumpurudin, No. 6, of calendar No. 1; this man's wife is stated by the police to have given up a pair of bracelets, which she said did not belong to them and of which she knew nothing. These bracelets were sworn to by the prosecutor and his witnesses, but the manner of their discovery by the police is suspicious, and with nothing else to criminate this prisoner, I do not think his conviction is warranted.

The others confessed, with exception of Mahommed Ali, and property was given up in support of their confessions, the property found in the possession of Mahommed Ali and that traced to those with whom he had pledged it, is amply sufficient to prove the crime of which he is convicted.

I, therefore, acquit Kumpurudin and convict the others, upholding the sentence passed upon them.

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others.

PRESENT:

SIR ROBERT BARLOW, BART., *Judge*.GOVERNMENT ON THE PROSECUTION OF JADUB
JOOGEE,*versus*

KULEEMUDDEEN MUNDUL (No. 1,) SHOOBUL JOOGEE (No. 2,) MIRTUNJYE JOOGEE (No. 3,) MOHESH PAUL (No. 4,) RAM JOOGEE (No. 5,) PULTOO OOPADHAI (No. 6,) KALLA CHAUND CULLIA (No. 7,) BHOOTA COWRAH (No. 8,) ROOPCHAND COWRAH (No. 9,) RASSOO DEY (No. 10,) RAJKISTO DASS SOONREE (No. 11,) NUFUR SHEIKH (No. 12,) GUNESH JOOGEE (No. 15,) BHOLANAUTH MUNDUL (No. 16,) JOGINDRONAUTH MULLICK (No. 18, APPELLANT,) RAMDHONE PAUL (No. 19.)

24Pergunnahs.

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Case of
JOGINDRONATH MULLICK and others.

CRIME CHARGED.—Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16 and 19, 1st count, dacoity in the house of prosecutor Jadub Joogee and plunder of property to the amount of Rs. 1,023-8, No. 18; 2nd count being accessary after the fact to the above crime, and 3rd count, Nos. 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 16 and 19, receiving portions of the above property, knowing them to have been obtained by dacoity.

In a case of dacoity, in which the actual dacoits were convicted and sentenced to various terms of imprisonment, a zemindar, in whose house one of the dacoits was found was convicted by the sessions judge of harbouring a dacoit, but acquitted by the Court owing to the insufficiency of the evidence.

CRIME ESTABLISHED.—Nos. 2 to 12 and 15, dacoity and receiving portion of the plundered property knowing them to have been acquired by the above dacoity, Nos. 16 and 19, receiving portions of plundered property knowing them to have been acquired by dacoity; No. 18, being accessary after the fact in harbouring Pultoo prisoner, No. 6, convicted of dacoity, and No. 1, receiving part of the plundered property, knowing it to have been acquired by dacoity.

Committing Officer.—Mr. J. Lewis, assistant, exercising powers of joint-magistrate of the 24-pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of the 24-pergunnahs, on the 28th January, 1854.

Remarks by the officiating additional sessions judge.—The house of the prosecutor was attacked by a gang of dacoits, on the night of the 2nd November last, and property to a large amount in gold and silver ornaments carried off. The affair was planned across the river, where the prisoners for the most part reside, and the party crossed and re-crossed in a boat hired for the occasion. The prosecutor and his mother, the witness No. 1, were sleeping on the premises when the attack was made, and recognized the prisoners Shoobul Joogee No. 2, Mirtunjye

Joogee No. 3, and Gunesh Joogee No. 15, in the act. The latter and her daughter, who were sleeping together, were beaten and ill-used by the dacoits, and mother and son named to each other the persons severally recognized by them on the departure of the gang from the premises. These parties were well known to them as connections and visitors. The articles plundered were partly pledged and partly the property of the prosecutor. Acting on the clue obtained from the alleged recognition, the police arrested the prisoners Mirtunjye Joogee No. 3, and Gunesh Joogee No. 15, who confessed crime and in their confessions made disclosures, which led to the apprehension of the whole of the prisoners and recovery of a portion of the plundered property. It will be seen from the record, that the greater part of the prisoners admitted their complicity in the dacoity before the police on being taken into custody, that some of them gave up the stolen articles and repeated their confessions before the magistrate. These recorded confessions will be found full and consistent with each other, in a remarkable degree, and create in my mind a strong presumption of their truth and genuineness. I cannot do better than give a summary of the proofs brought against the prisoners, in the mode adopted by the committing officer. Against the prisoner Kuleemuddeen No. 1, will be recorded the fact that in his house were found buried five articles of the stolen property, i. e. three gold and two silver ornaments, his rightful ownership of which he makes no attempt to establish. Against the prisoner Shoobul Joogee No. 2, that he confessed before the police, and repeated his confession orally before the magistrate, but refused to have it taken down in writing without the promise of pardon, which was refused, that he was recognized during the dacoity and produced a portion of the plundered ornaments from under ground, in a spot adjoining his house. Against the prisoner Mirtunjye Joogee, No. 3, that he confessed before the police and the magistrate, that he was recognized at the time of the dacoity and sold some silver ornaments, and old silver to one Johuree Potdar (released by this court). Against the prisoner Mohesh Paul, No. 4, that he confessed both in the mofussil and before the magistrate, and produced articles of the stolen property. The like remarks apply to the prisoners Ram Joogee, No. 5, Pulto Opadhai, No. 6, Kalachand Kulia, No. 7, Bhuta Kowrah No. 8, Rupchand Kowrah No. 9, and Rasu Dey No. 10. Against the prisoner Rajkishto Dass, No. 11, will be found recorded, that he confessed in the mofussil and verbally repeated that confession before the magistrate, but would not consent to have it committed to paper without the promise of pardon, which was denied, and that in his possession was found a portion of the plundered goods. Against the prisoner Nufur Sheikh, No. 12, that he confessed before the police and held in possession part of the stolen prop-

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perty. Against the prisoner Gunesh Joogee, No. 15, that he confessed in the mofussil and was recognized during the dacoity by the witness No. 1. Against the prisoner Bholanauth Mundul, No. 16, that part of the plundered ornament were found with him, his title to which he could in no wise make out. And against the prisoner Ramdhun Paul, No. 19, that he held from his son, the prisoner No. 4, four gold and six silver ornaments, which he hid in a tank and produced therefrom, after the latter had admitted crime and told the police that he had made over the property to the custody of his father. The case of the prisoner Jogindernauth Mullick, No. 18, is special, and I shall notice it presently apart from the rest. All the prisoners plead not guilty before this court and make various kinds of defences, some of which they attempt to establish without effect. These pleas are frivolous to a degree and disentitled to the slightest consideration. I shall now briefly comment on the case of the prisoner Jogindernauth Mullick, who was committed on a charge of being an accessory after the fact in this dacoity and plunder. The evidence which crimminates him is the testimony of the police serjeant, Thomas Campbell, witness No. 45, Kini Raur, witness No. 63, and Nubokishto Dhara, witness No. 66. The former and latter prove the harbouring of the prisoner Pultu Opadhai No. 6, and the second establishes an implied knowledge of such harbouring on the part of the prisoner Jogindernauth Mullick. The prisoner's defence drawn up by his counsel, Mr. Longueville Clarke of the Calcutta Bar, will be found on the record of the trial and goes to hold the prisoner harmless of all intent, by word or deed, to rescue Pultu from the law, or hinder his apprehension and trial. I will not follow Mr. Clarke through his arguments *seriatim* and state my objections against them, it is enough for the purposes of conviction, that he does not deny the gist of the charge brought against his client, namely, the concealment of the man Pultu in the Bytukkhana of Jogindernauth Mullick during his presence and with his implied knowledge, and Pultu's eventual release therefrom by the police. These facts are established by the clearest and most conclusive evidence, and constitute an offence of a high order in a country where zemindars and influential persons in the interior, possess such means of thwarting the police and arresting the course of law and justice. Considering the prisoner's youth, however, and his thorough respectability in point of birth, education and circumstances in life, I find it difficult to connect him as an agent in the felony out of which this trial has arisen, and consequently receive with extreme reservation that part of Kini Raur's testimony which by implication does so, though I utterly dissent from the grounds assumed by Mr. Clarke for rejecting her evidence and regarding it as inapplicable. The conviction therefore is of mis-demeanour and hence the comparative lenity of the

sentence and absence in it of the additional penalty of labor and irons.

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Sentence passed by the lower court.—Nos. 2 to 12 and 15, imprisonment with labor and irons, in banishment for fourteen years, and in lieu of corporal punishment two years more, in all sixteen years each; Nos. 16 and 19 imprisonment with labor and irons for seven years each; No. 18 imprisonment without labor and irons, for three years, &c. No. 1, imprisonment with labor and irons, for seven years.

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Case of
JOGINDRO-
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others.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) The petitioner appealed on the 26th January, 1854, against the orders of the sessions judge of the 24-Pergunnahs of that date, sentencing him to three (3) years' imprisonment without labor or irons, on conviction of being accessory after the fact by harbouring prisoner, No. 6, Pultu Opadhai, charged with dacoity and receipt of plundered property. Nineteen other prisoners convicted on various counts of the indictment have not appealed against their sentence.

For the purpose of establishing the guilt of the prisoner, three witnesses were examined in the sessions court namely Campbell, the Serjeant, Keenee Raur and Nobokishen Dhurah, the prisoner's Khansaman, the latter, however, was not examined in the magistrate's court.

Sergeant Campbell in his evidence shews, that on his going to the prisoner's house at dawn of the 8th November last, he was told by the burkundazes at the prisoner's gate that the Baboo was asleep, that he then asked for his gomashtas, who came and told him that Pultu had not been there for three months. On this, the Sergeant threatened to search the house if Pultu was not produced. The gomashtas went into the house, presently returned with keys, and with a third person unlocked a door, when he saw Pultu standing and apprehended him. In his desposition before the sessions judge he said he did not arrest the petitioner Jogindronath because then, that is at the time Pultu was arrested, he had no suspicion of the petitioner concealing Pultu.

The witness, Keenee Raur, who was at first a defendant, and made a witness afterwards, stated that the petitioner told *her* to go off, nothing further, which of course is no evidence against the petitioner on charge of harbouring the dacoit Pultu.

The third witness, Nobokishen, a Khansaman, was sworn in the sessions court only, and said that the two gomashtas told him to awake the Baboo; he did so, the Baboo came out, read a paper shewn by them and ordered Pultu to be delivered up to the Sergeant and to the police darogah, which was done shortly afterwards.

In all this evidence, I see nothing that would justify a conviction of harbouring Pultu a dacoit. Taken *per se* it affords ground

1854. for acquittal; if considered with the other matter adduced on the record, it does not connect the prisoner with any guilty knowledge of the fact of the commission by the prisoner Pultu of any felony, such as would make the petitioner responsible on a charge of harbouring a dacoit. He must be released.

March 1. Case of JOGINDRO-NATH MULICK and others.

PRESENT :

SIR R. BARLOW, BART., *Judge*.

GOVERNMENT,

versus

HURROCHUNDER GHOSE (No. 1,) GOBIND TEAR (No. 2,) JUMA MUSSULMAN (No. 3,) AND CHUNDER MUSSULMAN (No. 4).

Hooghly.

1854. CRIME CHARGED.—1st count, dacoity in the house of Chunder Churn Bose at Golabatee, in which property to the amount of Rupees 185-4 was plundered; 2nd count, having belonged to a gang of dacoits.

March 1. HURROCHUNDER GHOSE and others. Committing Officer.—Baboo Chunder Sekur Roy, deputy magistrate under the commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 31st January, 1854.

Four prisoners convicted of dacoity, and of having belonged to a gang of dacoits and sentenced to transportation for life.

Remarks by the officiating additional sessions judge.—The witnesses Nos. 1, 2, 3 prove both counts of the charge against all the prisoners. Their testimony shews that, about three years ago, the dacoity charged was committed by the prisoners and others under the leadership of Biru Mussulman, a noted sirdar dacoit. The gang assembled in a creek near the dwelling-house of one Brijo Baboo, and thence entering the Hooghly proceeded up the river and landed at the Golabatee ghaut. They remained concealed there until some of the party went to reconnoitre the premises, and eventually made their attack about midnight.* Walls were scaled, doors broken open, torches lighted and the house plundered. The dacoits then retreated to their boat and retraced their steps to the place from which they started. The spoil was made over to the said Brijo Baboo, who came on board the boat when she moored off his abode. Their statements also prove that all the prisoners took part in several dacoities, in which the deponents participated, and to the perpetration of which they give evidence and the appended records testify.

The prisoner Hurrochunder Ghose No. 1, pleaded guilty to both

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* Witnesses Nos. 7 and 8. counts of the charge before the lower court, and the record of his admissions is attested by the witnesses marginally* noticed.

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† Witness No. 9. The party robbed, as noted in the margin,† proves the occurrence of the dacoity charged.

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and others.

The prisoners deny charge before this court, asserting their innocence and maintaining that they have been falsely accused by the approver's witnesses, from malicious motives, as a ground for which they assign frivolous causes.

‡ Nos. 10, 11, 12. Three witnesses† appeared on behalf of the prisoner Hurrochunder

Ghose No. 1, and pronounced him to be a man of very questionable character and repute.

I convict all the prisoners, of having participated in the commission of the dacoity charged and of having belonged to a gang of dacoits, on the evidence of the approvers and the witness Lilab Mussulman, which testimony I have no cause to distrust, and recommend that they be sentenced to transportation for life with labor in irons. Against the prisoner Hurrochunder Ghose there is the additional proof of his own confession.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow Baronet.) The prisoner, Hurrochunder Ghose, confessed to accompanying the gang to the house of Chundee Churn Bose at Golabatee and also to having belonged to a dacoity gang; before the commissioner the approvers point out the prisoner as having joined them in several dacoities. The defence in the sessions court is a denial of the charge brought forward; one only of the prisoners, Hurrochunder, pleads good character but he fails in toto; his witnesses throw every suspicion upon him.

I convict the prisoners of the charges on which they are committed, and sentence them to imprisonment for life in transportation.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

AGA GHOLAM REZA AND GOVERNMENT,

versus

HURRO KHAN (No. 2,) MOOKTARAM KAWRA (No. 3,) SHEIKH MAHOMED HOSSEIN (No. 4, APPELLANT) AND KOORO BIBEE, No. 5.

Hooghly.

1854.

March 1.

Case of
SHEIKH MA-
HAMED HO-
SEIN & others.

CRIME CHARGED.—1st count, prisoners Nos. 2 and 3, burglary in the Boytuckkhana house of the prosecutor and theft therefrom of property to the amount of Rs. 123-2, on the night of the 3rd September, 1853; 2nd count, prisoners Nos. 2, 3, 4 and 5, knowingly receiving portions of the property so burglariously stolen.

CRIME ESTABLISHED.—Prisoners Nos. 2 and 3, of burglary and theft and receiving portions of the property so burglariously stolen and No. 4 of the latter crime only.

The circumstances of the case were held to prove guilty knowledge on the part of the prisoner.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly. Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 22nd October, 1853.

Remarks by the officiating additional sessions judge.—During the absence of the prosecutor from home, his house was burglariously entered through a window, and property consisting of wearing apparel and piece goods abstracted. About the time of the robbery, 11 P. M., the prisoners Hurro Khan and Sheikh Mahomed Hossein were seen by two of the witnesses, the one carrying a bundle and the other a box, and the latter was suspected from the first by the prosecutor, on account of his frequent visits of late and the fact of his being a man of bad repute. He was arrested the following day by the police on that suspicion, and verbally admitted before the darogah, that the prisoners Hurro Khan and Mooktaram Kawra had left the property in his house for the purpose of safe custody and that he had retained charge of it, believing it to have been honestly acquired. He pointed out part of the plundered property and reiterated his admission at the thannah which was duly recorded. On the information obtained from him the prisoners, Hurro Khan and Mooktaram Kawra were arrested at Kidderpore in Calcutta, and admitted having participated in the robbery. The former produced two more articles of the plundered property from the house of his mistress, and on the person of the latter was found a remnant of some cloth, which he affirmed had been given to him, together with another piece of cloth which he also produced, by the prisoner Hurro for his trouble in carrying the stolen goods. The identity of the recovered property and the voluntariness of

the prisoner's admissions before the police are established beyond doubt. Before this court the prisoners deny the charge. Hurro Khan states that the chintz pieces, &c. were purchased by him at Chinsurah from one Jugut Baboo for 45 rupees, and that as he was hawking them from place to place his carrier, or cooley, the prisoner Mooktaram Kawra, fell lame at night and that he in consequence deposited the goods with the prisoner Sheikh Mahomed Hossein for safe custody. The prisoner Mooktaram corroborates this statement, and both aver that their confessions were extorted by the police. His defence however is unsupported by evidence, as the prisoners decline to call any witnesses to the pleas urged. The prisoner Sheikh Mahomed Hossein also pleads in his defence, the facts asserted in the latter part of the above allegation and calls witnesses to prove that the prisoner Hurro applied to him, one night about 11 P. M., to receive charge of some bales of cloth. Though the persons examined on his behalf speak in general terms of such application having been made, yet all of them affirm that it was rejected by the prisoner at the time; but the evidence is clearly suborned and is as incredible as the alleged facts are improbable. The *futwa* convicts the prisoners Hurro and Mooktaram of the higher offence, and the finding is consistent with the indictment: but I award to the prisoner Mahomed Hossein the same measure of punishment as to them, because I regard him as equally culpable in the eyes of the law from the nature of his complicity in the affair.

Sentence passed by the lower court:—To be imprisoned with labor and irons for five (5) years each.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) No. 4 has appealed. He allows in his petition of appeal that the property was found in his house, and that he had received it from Hurro, not knowing how it was acquired; but from its having been proved to belong to the prosecutor, and the prisoner having been seen in company with Hurro, it is not to be doubted that he knew he was concealing stolen goods. I reject the appeal and confirm the finding and sentence.

1854.

March 1.

Case of
SHEIKH MA-
HAMED HOS-
SEIN & others.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

TARA BAORINEE AND GOVERNMENT,

versus

KALACHAND BOUREE.

Hooghly.

1854.

March 1.

Case of
KALACHAND
BOUREE.

On a con-
viction of
wounding with
intent to mur-
der, the sen-
tence was with
reference to
the slight na-
ture of the
wounds reduc-
ed.

CRIME CHARGED.—1st count, wounding the prosecutrix with intent to murder, on the 6th September, 1853; 2nd count, violently assaulting the prosecutrix.

CRIME ESTABLISHED.—Wounding with intent to murder.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 24th October, 1853.

Remarks by the officiating additional sessions judge.—The prosecutrix is the mistress of the prisoner, and had some altercation with him which induced him to beat her. While sitting crying behind the house of a neighbour, an acquaintance came up and asked her what was the matter, when she told him how she had been beaten by the prisoner. The prisoner happened to witness this conversation and dragging her back to the house assaulted her again. At night he attacked her with a knife, which he had borrowed apparently for the purpose, and, but for the timely arrival of the neighbours attracted by her screams, would in all probability have murdered her, as he admitted to be his intention. The knife was very blunt and the intended victim a strong active young woman able to make good resistance, and the injuries in consequence were comparatively slight. The prisoner was arrested "*flagrante delicto*," and confessed the crime both before the police and the magistrate. The owner of the knife admitted that the prisoner had borrowed it during the day and when the chowkedar seized him in the house, he had it in his hand. The confessions tend to shew that the prisoner committed the deed under feelings of jealousy, but there is nothing in the record to prove that there existed any cause for this. The prisoner urges the plea before this court, and admits having beaten the prosecutrix and turned her out of his house, in consequence, but he denies the charge of cutting and wounding and attributes the scars on her throat, to her having come in contact with a bamboo projecting from the thatch of the house in the act of rushing out. The prisoner cites no witnesses.

Sentence passed by the lower court.—To be imprisoned with labor and irons for fourteen (14) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I think the evidence sufficient to sustain the conviction in this case; but with reference to the slight nature of the wounds, I consider that a sentence of seven years' imprisonment, with labor and irons, will be adequate to the prisoner's crime. I reduce the sentence accordingly.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT, JOYNARAIN AND SEW. ARAIN,

versus

LUCHUN ALIAS SOBOW (No. 4.) DAMAH* (No. 5.)
MUSSUMAT SOOKEAH* (No. 6.) AND BISSESSUR
CHOWKEEDAR (No. 7.)

Sarun.

1854.

CRIME CHARGED.—No. 1, wilful murder of *Mussumat Gungea* and theft of property value Rs. 49-4; No. 5, accessory both before and after the fact; Nos. 6 and 7, willfully keeping in their possession the above stolen property knowing the same to have been stolen.

Committing Officer.—Mr. J. H. Lynch, deputy magistrate of *Sewan zillah Sarun*.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 3rd February, 1854.

March 3.
Case of
LUCHUN alias
Sobow and
others.

Remarks by the sessions judge.—The following is a short statement of the main facts of this case as they appear in the trial. The prosecutor Joynarain (who was sleeping on the night of the murder in his house in mouzah Oocharee) being awakened between the hours of 10 and 11 P. M., by outcries on the part of his cousin's wife, *Mussumat Khuteah*, that the prisoner Sobow was murdering her aunt, got up to ascertain what was the matter, when he saw him (Sobow) escape from the house with a *lotah* in his hand, and failing in his attempts to stop him, and being at this time joined by the witnesses, *Bhekun* and *Bhekarree*, they all set off in pursuit of him and after following him, first of all to his own house (which was in the same village and only one *russee* distant) and then on again to the bank of a small stream running between their village and mouzah *Hosseinpore*, they were there brought up, and whilst the prisoner jumped in and swam over, they had to go round by a ford to get across. They lost no time, however, in doing this, and again continuing the pursuit, they found and took him to his father-in-law's (*Bhodee's*) house and brought him to Oocharee, where they found *Mussumat Gungea* (prosecutor's aunt) robbed of all her ornaments, and quite dead with several wounds on her person, and a *bajalee* (a Nepal knife) lying by her covered with blood.

Held that the deceased having died, not from the mortal nature of the wounds inflicted by the prisoner, but from rupture of the spleen, consequent upon the injuries received by her, the act of the prisoner amounted only to attempt at murder.

Up to this time no suspicion was entertained that Sobow had had any accomplices in the crime, neither was there any trace of the plundered property; but when the jemadar came, (to whom information had in the mean time been sent) Sobow confessed

* Acquitted by the lower court.

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March 3.

Case of
Luchun alias
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others.

to him, that he had killed the woman, and had taken her ornaments, and said that he had done it at the instigation of the prisoner Damah, who had borrowed a sword for the purpose, from a man named Munuruth. He stated also, that he had left the things at Damah's house, upon which parties were sent there who learnt from his mother (Mussumut Sookeah) that Sobow had brought the ornaments to her son, and had left them there, promising to call for them the next day, and that Bissessur chowkeedar had been there and had taken them away.

Upon this, enquiry was made at Bissessur's, to ascertain if he had the ornaments, and search being made in his house, the *lotah* and the ornaments (Nos. 1 to 4) were found buried in the ground, and covered with some stalks of *jumerah*, and Damah afterwards giving himself up to the police, and all the parties implicated being thus brought together, the case, after full enquiry on the part of the deputy magistrate, was made over for trial on the charges, &c. stated at the head of this letter.

To the deputy magistrate, Sobow again confessed his guilt and stated that Damah was the instigator of the crime. He said that he and Damah had some time before planned the thing, and that he (Damah) after making him drunk, had borrowed the sword, with which he (Sobow) had killed the deceased. He said also, that the ornaments had been left at Damah's house, and that he (Damah) had stood outside whilst the murder took place, that he had changed his wet *dhotee* there, and that a girl (Mussumut Nugueeah) had recognised him, whilst committing the murder, by his voice, and by calling out, had compelled him to make off and escape.

Damah, to the deputy magistrate, denied all knowledge of the murder, but allowed that Sobow had brought the ornaments to his house at six ghurries *rat* on this night, and had left them with him, promising to call for and take them the following day, and that as he was going away to collect some leaves (of the *mowah* trees) he had left them in the care of his mother. He allowed also, that he had been drinking at the grog shop on this day, but denied that it was in company with Sobow.

Mussumut Sookeah (Damah's mother) also denied all knowledge of the murder, and gave a similar account to her son's, of the ornaments being brought to her house by Sobow, and she also repeated that Bissessur had come the next day and had taken them from her.

Bissessur stated, that having heard a cry of thief, &c. he had gone to the prosecutor's house, and learnt there of the murder, and that when Sobow had confessed, and had stated that he had left the ornaments at Damah's house, he had gone there and had taken them from his mother and had afterwards given them up to the jemadar; that he had always intended giving them when the matter should be inquired into.

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Case of
LUGHUN alias
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others.

The evidence in this cases as regards the guilt of the prisoner Sobow, is most full and conclusive; two witnesses (Mussumut Khuteah and her daughter Nugueeah) saw and recognised him when in the very commission of the crime, and at once spoke of him as the murderer. He was followed from the house by the prosecutor and two other parties (Bhekun and Bhekaree) first to his own house, and then beyond it again, to the bank of the river, and though they then lost sight of him for a time, they soon recovered the track and apprehended him in the house of his father-in-law, in Hosseinpore. He made a full confession of his guilt both to the police and before the deputy magistrate. The stolen articles were clearly traced to have been left by him at Damah's house, and the *bajalee* also found by the body, was identified as his property. On his trial here, he in some degree alters his former statements, and says, that Damah after having made him drink a good deal, first of all took him to the house of Munuruth, where he got the sword, and that they then proceeded together to Damah's, where they remained till all was quiet, when they crossed the river together to the prosecutor's which he (Sobow) entered by Damah's help, and then let him in, and that he then got frightened and told Damah that he would go away, when the latter placed him in a corner and taking the sword, with four cuts killed the woman, and pulled her off the bed, and taking her ornaments went off with them. He adds that when they came out, they saw Bissessur (who had gone with them) standing under a *burr* tree, and that he advised him (prisoner) to go to his father-in-law's, and Damah to go away on the plea of collecting leaves and told them to leave the ornaments with his (Damah's) mother. He declares that he mentioned Damah's share in the offence to the jemadar also, but that the latter told him to speak of himself only, which he accordingly did.

Damah again declares that he knew nothing of the murder, and had nothing to do with it; and says that Sobow brought the ornaments to him to keep till next day, and begged him not to tell his mother of it, but on his explaining that he had to go away to collect leaves, it was agreed that they should be left in her charge. He also states, that Sobow was wearing a wet *dhotee* when he came there, and that he changed it for another, and took *both away* with him, and (though he admits that he is in the habit of drinking there) he denies having been at the grog shop with Sobow on the day of the murder.

Mussumut Sookeah tells the same story as her son, and says, that Sobow brought the ornaments to their house, promising to call for them the next day, when she was to restore them; and that on the following day Bissessur and Sobow's father came for them, when she gave them up to them.

Bissessur in his defence states that, having heard the cry, he

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others.

had gone to the house of the prosecutor and saw him and some others follow in pursuit of Sobow, and that having gone a little way with them he turned back, whilst they went on and took him; when he and Bhekaree were left in charge of him, whilst the others went to report the case to the police; that the next day he spoke a good deal to the prisoner, Sobow, and hearing from him that the things had been left at Damah's, he and Bhekaree went there, and took them away; that being engaged looking for Damah, he was unable when the jemadar came, to give the things to him, but that when asked by the latter whether he had them, he admitted it; and taking them out from under the *junerah* stalks, he gave them up. He calls two witnesses to prove that he gave them up himself, but both of them deny all knowledge of this fact, and it is clearly and fully shown that they were found concealed in his house when search was made there. Sobow's statement on the trial would implicate him as an accomplice in the murder, but it is quite unsupported by any corroborative evidence, and in fact he is charged only with knowingly being in possession of the stolen property, and I consider this charge fully established against him, as from his own admission it is clear that he must have known how the things had been acquired, and he certainly assigns no satisfactory reason for their being buried and hidden in his house; whilst it was clearly his duty, as a chowkeedar, to have taken them at once to the police, whereas he is said in the first instance to have denied that he had them.

Setting aside the unsupported statements made by Sobow of Damah's being the instigator and perpetrator of the crime, there is nothing like satisfactory proof against the prisoners. None of the witnesses speak of more than one person as engaged in the crime (and had there been a second he surely must have been seen) neither is it shown that he (Damah) ever borrowed a sword of Munuruth, nor do I in fact believe that the murder was committed with a sword at all, but with the "*bajalee*," which was found lying by the body, and which has been proved to belong to Sobow. There is no proof that he, (Damah) had been drinking with Sobow on the night of the murder, and, but for the fact of the ornaments being traced to his house, there would be no grounds even for suspicion against him. As it is, no doubt some degree of suspicion attaches to him and also to his mother (though in a lesser degree), from this circumstance, still it is not so great as (in my opinion) to warrant a conviction, and as on the whole I concur with the *futwa* of the law officer in the acquittal of both of these prisoners, I have in accordance with it directed them both to be released.

The Moulvee convicts the prisoner Sobow of wilful murder and makes him liable to capital punishment by "*kissas*," whilst he convicts Bissessur chowkeedar of the charge made against him

and holds him liable by "*taxeer*." In the convictions of both these prisoners I fully concur, and as I know of nothing which can be urged in extenuation of the cold-blooded and fearful murder committed by the prisoner Sobow, I deem it my duty in his case to recommend a capital sentence, whilst in that of the prisoner Bissessur chowkeedar I recommend a sentence of five years' imprisonment with labor and irons.

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others.

Dr. Bose, who made the *post mortem* examination of the body of the deceased in this case, having long since left the district, his report of the cause of death has not been verified on the trial; however this is of little consequence in this case, as there is no doubt, but what the violence used was the cause of death.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) There can be no doubt upon the confessions of the prisoner, Luchun alias Sobow, that he was engaged in the attack on the deceased, while it is satisfactorily proved by the evidence that he alone committed it.

The report of the medical officer, however, who examined the corpse (which although it cannot be received in evidence against the prisoner, not having been attested according to Circular Order No. 42, dated 27th March, 1840, may be referred to as descriptive of the wounds,) is that in his opinion "the deceased died from the immediate effects of the rupture of the spleen, caused by some direct violence as a kick or blow of a heavy blunt body on the side near the spleen. It is probable that the wounds on the hand and neck were produced by a sharp weapon like a *bajali*."

The above would make it appear that the wounds were not mortal and were not the immediate cause of death, and that if the deceased had been a healthy subject, she would have survived. I, therefore, convict Luchun alias Sobow of robbing and wounding with intent to murder, and sentence him to imprisonment with hard labor and irons in transportation for life.

As regards the prisoner Bissessur, I sentence him, as proposed by the sessions judge. He seems to have been actuated by motives of cupidity, in obtaining the stolen property from Mussumt Sookeeah with a view to appropriate it. There is nothing to connect him with the original robbery and death of the deceased.

I observe that the sessions judge might have passed sentence upon him, as he was competent to do so by Section 4, Regulation XII. 1818.

PRESENT:

A. DICK, Esq., *Judge*.

GOVERNMENT AND DOLO DOSS,

versus

KHOOLOO DOSS.

Rungpore.

1854.

March 3.

Case of
KHOOLOO
DOSS.

Prisoner charged with wilful murder and convicted, on violent presumption, by the sessions judge and law officer, acquitted by the Court owing to the insufficiency of the evidence. Negligence of the police in the preliminary inquiry pointed out.

CRIME CHARGED.—1st count, wilful murder of Mussumut Nendo, wife of Dolo, the prosecutor, on the 20th November, 1853, corresponding with 6th Uggran, 1260, B. S.; 2nd count, privy to the above crime.

Committing Officer.—Mr. A. W. Russel, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, sessions judge of Rungpore, on the 20th November, 1853.

Remarks by the sessions judge.—It would appear that on the night of the occurrence, the husband of the deceased and his neighbours were watching in their rice-fields, when they heard screams proceeding from his house and running there, saw the prisoner Khooloo making off, who, upon Dolo Doss striking him, dropped a bloody *koopree* (a *bhooteah* knife), and inside the house the wife of the prosecutor, Mussumut Nendo, lying dead. The prisoner denied from the first, but allowed that the *koopree* was his. Before the darogah he said that he was on neighbourly terms with the deceased, but had no intrigue with her, that he was sitting by the fire with her when her husband suddenly came in and struck him, he dropped his *koopree* and ran away. Before the magistrate he tells much the same story denying the intrigue and asserting that the husband killed the woman.

Before the sessions court, the prosecutor Dolo Doss says, that one night, he does not remember the date, he was watching his crop, when he heard a noise in his house, and on going there saw Khooloo tear down the *tattee* and try to escape, he struck him, and then Khooloo threw down the *koopree*, which was bloody, and ran into the jungle. He went inside the house and found his wife lying dead, with two wounds on the head. Near the body was the sheath of the *koopree*.

Tutoo No. 1, Ghugoo No. 2. Were in their fields at night, when they heard the noise of a woman in prosecutor's house, and going there saw the prisoner break down the *tattee* and attempt to escape. The prosecutor struck him, when he dropped the bloody *koopree* and ran into the jungle. On going into the house they saw the woman lying dead with wounds on the head; when they brought the prisoner back, he acknowledged the *koopree* as his.

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Case of
Khoooloo
Doss.

Tutoo No. 1. (Had died since the committal, but his foudjaree deposition was proved by witnesses, Sonnaullah and Turukullah whom I summoned for that purpose).

Dolo chowkeedar No. 3. Was called by the prosecutor and told what had happened. He proceeded to the prisoner's *mychan* in his field and found him there; he immediately acknowledged the *koopree* and said, that he had an intrigue with the deceased, and therefore her husband killed her.

Bancha No. 4. Says he was in his field when he heard the woman scream out, that Khoooloo had killed her. He went to the house and saw the prisoner break down the *tattee* and the prosecutor striko him as he ran away. He went inside and saw the woman still alive, bleeding and trembling in her limbs, she said, Khoooloo had killed her; a lamp was brought and she died; when the prisoner was brought in; he acknowledged the *koopree* to be his, and said that he had brought it when he came to see Nendo, but dropped it when running away.

Dr. Walter (No. 8.) stated that the body was in too advanced a state of decomposition to admit of examination. He, however, observed, that the scalp had been wounded on the upper and back part of head, but whether before or after death he was unable to say.

Dual, No. 5, Kishen Doss, No. 9, Prem Jana, No. 10. Only heard what had happened.

In his defence before the court, the prisoner pleads not guilty. Says he has intrigued with the woman for the last six months, that she invited him to visit her on the day of the occurrence, which he did, her husband came in and struck him, and he ran away dropping his *koopree* which he had taken with him, and that he does not know how she was killed. He calls four witnesses. Mussumut Woochit Dashya, wife of Tutoo No. 11, says that her house is close to the prosecutor's. She heard the noise, but did not go out, and her husband afterwards told her Khoooloo had killed deceased.

Mussumut Jushoo, No. 12, heard the deceased calling out that Khoooloo was killing her, she went and found she was dead.

Duloo No. 13, Lyam No. 14, Bhedoo No. 15, know nothing.

Futwa of the law officer.—The law officer considers the case proved, but as it is on violent presumption, *kissas* barred, and the prisoner only liable to *dayut*.

Opinion and recommendation of the sessions judge.—The witnesses are all very jungly people, residing on the very borders of the Morung, and their evidence is not so clearly given under cross-examination as is generally the case with people who live in the towns; witness No. 4, Bancha was very unsatisfactory, and I do not place much reliance on his story of the woman being alive and saying that Khoooloo had killed her. It is probable she might have cried out, when the first blow was inflicted, as witness No.

1854.

March 3.

Case of
Knoorloo
Doss.

12, Jushi, says and as Bancha is Jushi's husband, he confuses what she heard with what he heard; however, there is sufficient proof of his having visited the woman, who bore a good character, late at night with a *koopree*, which the Bengalis are not in the habit of wearing, screams being heard, and of his then being seen to tear down the *tattee* and try to escape, and in so doing to drop the bloody weapon, which he acknowledges to be his, I therefore agree with the law officer, and as capital punishment is barred, I would recommend imprisonment for life in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The facts established and admitted by prisoner from the first are, that prisoner visited the deceased and was found with her in the house by prosecutor, her husband, who struck him with a stick as he ran away, when he dropped the *koopree*, and that the wife of prosecutor was seen lying dead within the house. Prosecutor in his deposition says that he was alone, when he surprized prisoner with his wife, and that the eye-witnesses, to the prisoner running off, did not come till afterwards: and this the deposition of those witnesses corroborates. Therefore, there is no proof, as to who killed the wife. The prosecutor or the prisoner. The wounds had more the appearance of having been inflicted with a *lattee* or club, as at first stated by prosecutor, than with the *koopree*. Inflicted with the *koopree* they would have been more decidedly incised, and deeper; and the *koopree* would have been so bloody, as to have left no doubt of it. The police make no mention of its being bloody, an important omission! Prosecutor, in the foudaree court, distinctly stated that it was *not* bloody. The prisoner had no *lattee*: prosecutor had. The prisoner had no provocation to strike the deceased: The prosecutor had. The court not satisfied with the evidence against the prisoner, acquit him, and order his release.

The court observe, that two days elapsed, from the murder to the appearance of prosecutor at the thannah to depose: and the corpse was not forwarded for examination by the surgeon, till three days after the murder. No mention is made in the inquest, (*sooruthal*), as to whether the wounds were apparently inflicted with the *koopree* or a *lattee*; and whether the *koopree* was found bloody, or not. To all this negligence is attributable the obscurity in which the case has been enveloped; and the conflicting judgments on it. The magistrate will take proper notice of such dereliction of duty.

PRESENT:
A. DICK, Esq., *Judge*.

SHEIKH NEAMUT,

versus

KOCHUN SIRCAR (No. 2,) SHEIKH AINOULLAH
(No. 3,) KOHUN SHEIKH (No. 4,) ALLUM SHEIKH
(No. 5.)

Mymensingh.

CRIME CHARGED.—Wilful murder of Kochun Sheikh.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. C. E. Lance, officiating magistrate
of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh,
on the 5th November, 1853.

1854.

March 3.

Case of
KOCHUN SIR-
CAR and
others.

Remarks by the sessions judge.—From the evidence of the
prosecutor and his witnesses, and the admission of the prisoners,
who are all brothers and cousins of the prosecutor, it appears
that a quarrel took place, on the afternoon of the 3rd August
last, between prisoners Nos. 3 and 4, and the prosecutor's bro-
ther, Lochun, regarding an *ail* between their respective fields,
which adjoined each other, and No. 3, threatened to beat Lochun
with a *kodalee*, when some of the witnesses separated them, Lo-
chun's brother, the deceased, who went to *haut* that day having
on his return in the evening heard of the quarrel, became enraged,
and seeing a bamboo *koora* ran towards the house of the pri-
soners, followed by the witnesses who went to bring him back,
and began to abuse them for having quarrelled with his brother
during his absence. On this the prisoners came out with *lattees*
(No. 2, having a *jatee* or spear) and a scuffle took place be-
tween deceased and prisoners, in which No. 2, inflicted a blow
on the deceased's head with his *jatee*, which immediately knock-
ed him down, when the other prisoners also began to beat him
with *lattees*, when the witnesses separated the parties, witness
No. 10, and others taking the prisoners to their house. The
witnesses then brought the deceased, who was lying insensible
and speechless, to the prosecutor's house and attempted to revive
him without effect, and on his death, about six *ghurrees* afterwards
at night, they took the corpse and left it at the house of the pri-
soner No. 2. The civil assistant surgeon, who examined the
body, found death to have been caused by a fracture of the skull;
he deposed that there were two lacerated wounds on the head,
each two inches in length, one penetrating wound on the left
arm two inches in depth and two in width, and the head was
severely bruised above the fracture, the left side of the chest was
also bruised; that these injuries must have been caused by some

Prisoners con-
victed of cul-
pable homicide
and sentenced
to four years'
imprisonment.
Appeal reject-
ed.

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others.

heavy instrument, such as the *lattee* shown him; the penetrating wound must have been caused by some pointed instrument, such as a spear; that these injuries were inflicted during life was apparent from the effusion of blood around them; that the lacerated wound on the head might have been produced by blows from a spear, and the person may have survived some hours in an insensible state, or might have died within an hour after receiving them. The prisoners deny the charge, urging, that their house was attacked at about half *pukur* after nightfall by the prosecutor and his party owing to the quarrel which took place in the day regarding the *ail*, that they were assaulted by them, when by the interference of witness No. 10, and others, they were extricated from the scuffle and ran away through fear, and that in the dark, prosecutor and his party must have killed the deceased, No. 5, adding that he was not at home at the time. The prisoners, however, signally failed in proving the pleas advanced by them, as the witnesses whom they examined on the trial, did not support any of the points on which they were cited. The jury who sat on the trial returned a verdict of guilty of culpable homicide against the prisoners, in which I concurred.

Sentence passed by the lower court.—To be imprisoned without irons each for the period of (4) four years and to pay a fine of 100 Rs., within one month, or in default of payment to labor until the fine be paid or the sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The Court see no reason for interference with the sentences passed on the prisoners, petitioners.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

Hooghly.

GOVERNMENT AND RAMGOPAL SOW BURNICK,

versus

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Case of
Gopal Har-
ree & others.

GOPAL HARREE (No. 2,) RAKHALL HARREE (No. 3,) CHEEROO BAGDEE (No. 4,) BHANGY BANSPORE (No. 5,) TARRA HARREE (No. 6) AND NOBIN HARREE (No. 7.)

CRIME CHARGED.—Dacoity on the 13th November, 1853.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 13th December, 1853.

Remarks by the officiating sessions judge.—The trial was conducted under the provision of Act 24 of 1843.

The appeal was dismissed, the evidence for the prosecution being held sufficient.

The prisoners pleaded not guilty.

The facts of the case are as follow. On the night of the 19th Kartick or 3rd November 1853, the prosecutor's house was attacked by a band of 16 or 20 dacoits, who effected an entrance by one of their number getting over the outer wall, by means of a palm tree which overhung it, and opening the door to his accomplices, who succeeded in carrying away property valued at rupees 30-1-0.

The prosecutor awakened by the noise, recognized the prisoners, Nos. 2 and 7. These and the other prisoners were likewise indentified at the dacoity, and when effecting their escape from prosecutor's house, by the eye-witnesses, Nos. 1, 2, 3, 4. The prisoner, No. 2, confessed both upon his apprehension and before the magistrate, naming all the others as his accomplices in the dacoity. No. 3, made a similar confession to the police, which he however retracted, when examined by the magistrate, and both prisoners denied their confessions at the trial.

The witness, No. 2, Bhyrub Manjee, deposed before the police and the magistrate, to recognizing the prisoners, Nos. 2, 4, 6, 7, at the trial; however he admitted that he was not previously acquainted with them, but that Mohesh chowkeedar witness No. 1, named them to him on the night of the dacoity. The fourth witness, Poran Basse, also named the prisoner No. 3, at the sessions, whose name does not appear in his evidence given before the magistrate.

The only prisoners, who offered any regular defence, were the chowkeedars, Nos. 4 and 5, the former deposed, that he was upon his beat during the whole night of the dacoity and cited several witnesses in support of his allegation, these were, however, with a single exception, unable to testify to his presence at the time of the dacoity, and as the prosecutor's house is only a mile from the chowkeedar's village, he might possibly have been concerned in the dacoity which occurred near midnight and have attended his duty both before and after the event. The witnesses cited by No. 5, to prove an *alibi*, were not produced at the sessions, but as the person upon whose testimony he chiefly relied, had already denied all knowledge of the prisoners' movements on the night in question, I deemed it unnecessary to defer the trial for their attendance.

The proof rests upon the evidence of the eye-witnesses, corroborated by the confessions of the prisoners Nos. 2 and 3, made by both before the police, and repeated by the latter in the presence of the magistrate, and although I consider recognition alone, rather a dangerous test of guilt, I do not hesitate to credit the testimony given in the present instance, supported as it is, by the ready and voluntary confessions of the above named prisoners, made at the time of arrest, before they had an opportunity of communication with the accomplices whom they then

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Case of
GOPAL HAR-
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REE & others.

implicated, and I do not consider the discrepancy in the evidence of the witness, No. 2, sufficient to shake the general credibility of the testimony for the prosecution.

I convict all the prisoners of the crime charged, and I sentenced Cheeroo, No. 4, who is a chowkeedar, and Tarra Harree, No. 6, who was but recently released after undergoing a sentence of ten years' confinement for dacoity, to imprisonment with hard labor for fourteen years, and the other prisoners, Nos. 2, 3, 5, 7, to seven years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) No property was found on the prisoners, but they were all named by the chowkeedar on first reporting the dacoity, the morning after its occurrence, and confessing prisoners implicated those named by him. There are some discrepancies in the evidence for the prosecution as to recognition, but not sufficient to invalidate it.

I see no reason for interference with the sessions judge's order. I reject the appeal.

PRESENT:

A. DICK, Esq., *Judge.*GOVERNMENT, MUSSUMUT DEO KULBEA GWAL-
LIN AND OTHERS,*versus*

Behar,

MOHESHEE DOSADH.

1854.

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Case of
MOHESHEE
DOSADH.

CRIME CHARGED.—1st count, wilful murder of Dyal Gwalla; 2nd count, severely beating the said Dyal Gwalla, from the effects of which he died; 3rd count, beating Juggoo Gwalla, plaintiff.

Committing Officer.—Mr. A. G. Wilson, officiating magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 18th January, 1854.

Prisoner con-
victed of ag-
gravated cul-
pable homi-
cide and sen-
tenced to four-
teen years'
imprisonment
in banishment.

Remarks by the sessions judge.—The deceased and one of the prosecutors, Juggoo Gwalla, on the evening of the 2nd November last, were drinking at the Sunaie-bazar liquor shop, two miles distant from the deceased's village, where they met the prisoner, who is chowkeedar of the Selimpoor monastery, situated between both places. According to Juggoo, the prisoner wanted the deceased to treat him to drink, it being holiday time, which the latter refusing, the former threatened him, and as stated by Juggoo before the police, abuse was exchanged between them. The deceased first left the liquor shop, followed by the prisoner, and the prisoner afterwards by Juggoo. Juggoo's story then

is, that he found the prisoner near the monastery beating the deceased, and also brutally ill-treating him, having pinioned him for this purpose. The prisoner, binding him in a similar manner, also beat him.

Witness No. 1. Kunhye Gur Goshain.

Ditto No. 2. Gungadosadh.

Ditto No. 3. Bheekaree Singh.

Alarmed by the cries set up, the three eye-witnesses reached the spot. Witness No. 1, is one of three, resident goshayns of the place, the other two being said to be feeble or lame.

Witness No. 2, a chowkeedar, and witness No. 3, are residents of the deceased's village, who state that they heard the outcries at no great distance from the monastery. They depose to having found Juggoo beaten, but not pinioned, whilst the deceased was pinioned, and the prisoner was brutally ill-treating him with a stick. When the witnesses challenged, the prisoner replied he was chastising "bad characters," and on their remonstrating, he either ran at or threatened them. Three eye-witnesses were thus afraid to interfere, whilst one man was brutally maltreating two defenceless persons in their presence, and all that can be said in their favor is, that the prisoner is an ill-looking powerful man. They then witnessed the prisoner drag the helpless deceased inside the monastery, where according to witness No. 1, loosening his arms, he threw him down and left him. They also saw Juggoo crawl inside the monastery, where according to witness No. 1, he and the deceased passed the rest of the night. The only particular exception to the foregoing is, that witness No. 1, though he saw the beating, did not witness the brutal ill-treatment of the deceased's person, as the other two did, which tallies with his statement that he retired and stood in the doorway of the monastery on the prisoner threatening him. Wit-

Witness No. 4. Dumree Papee. Witness No. 4's testimony, also a resident of the monastery, is the most incom-

plete and equivocating. He reached the spot after the beating was over, found both the deceased and Juggoo pinioned and told the prisoner to let them go. Before the police and magistrate, he had also seen the prisoner pull the deceased inside the monastery, but before this court he equivocated on this and other points, as will be again noticed. I regard him as a low caste witness, whose prejudices are all with the prisoner, and who either purposely equivocates, or is too much afraid of the prisoner to tell the whole truth.

The next morning Juggoo managed to return to his home having informed the deceased's relatives, the other two prosecutors, of what had happened. They must have been very little concerned at the deceased's absence the whole night, rather a tell tale of gwalla habits. They brought the deceased home from the monastery in the same helpless state, in which he expired during the following night, before the police could reach

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DOSADH.

1854. the spot. His body underwent *post mortem* examination and Dr. Diaper describes its internal injuries, "the consequence of severe beating," as much more violent than those externally visible. Juggoo's person also showed marks of beating.

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Case of
MOHESH
DOSADH.

The prisoner's defence has, on every occasion, been the same; that the afternoon preceding the night of the occurrence, the deceased, Juggoo Gwalla and others, passed along telling him they had taken hush money about one Duleyl Kahan's missing cow, and that he must accompany and drink with them. The prisoner as a Government servant refused! About midnight he heard outcries near the monastery, and on reaching the spot, found the deceased and Juggoo drunk and fighting. He seized the deceased and pulled him inside the monastery, Juggoo Gwalla following, where he left them both. Before this court he also added for the first time that the accusation against him, originated out of spite by the maliks of Sareyha and Ferozepoor, though the story he told about it, is a very incomprehensible one itself. Before the officiating magistrate he called witnesses, who knew nothing in his favor and he did not summons any before this court.

The *futwa* of the law officer, no deadly weapon having been used, convicts the prisoner of the culpable homicide of the deceased, and also on 3rd count, of beating Juggoo Gwalla prosecutor, on strong presumption, and declares him liable to punishment, for the extreme price of blood by "*Deyut moghuliza*."

The main facts of the occurrence, under his own colouring as above shewn, are thus adopted by the prisoner himself. But his statement is an incredible one in itself. No drunkard could have maltreated another in the manner the "*post mortem*" proves to have happened to the deceased. Dr. Diaper is of opinion that the deceased was very probably beaten with his arms pinioned, "as the arms did not present (as detailed in my first letter) any thing like the same extent of injury as that observed upon the trunk," and he "must have been beaten very severely and for a considerable length of time, as the sub-cutaneous ecchymosis was very general." Indeed the great internal injuries corresponding to slight general tumefaction of the body, indicating severe maltreatment for a considerable length of time, is consistent with the victim's having been pinioned and completely at the mercy of his oppressor, who, single-handed, could scarcely otherwise have so tyrannized over both the deceased and Juggoo in the manner he is described as having done, and this goes far to corroborate the evidence of the eye-witnesses, whose testimony I find no reason to impugn, or why it should not have told equally in favor of the prisoner, had there been any truth in his story. It is the testimony of persons amongst whom he has been either living or serving as a chowkeedar, since

his father's time, and who know nothing to his disadvantage besides the offence under trial. The prisoner allowed these witnesses to pass out unquestioned, except Gungadosadh, witness No. 2, whom he merely questioned whether he had not seized Juggoo Gwalla and another in a case of theft some twenty years ago, and which was denied in reply. The brutal treatment of the deceased's person has been always deposed to by the witnesses, and signs of it are noted under the 6th entry in the inquest, but escaped the observation of the medical officer, which I regret, as corroborative or otherwise of the witnesses' evidences in such respect it would have been invaluable in considering the enhanced punishment due to such brutality, which it will now be safer to omit. The origin of the occurrence is involved in much doubt. The eye-witnesses know nothing about it beyond the prisoner's calling his victims "bad characters" whilst ill-treating them, though they themselves do not personally recognize them as such. Dumree Passie (witness 6,) at first more communicative, told the police, that the prisoner's reply to him was "what had happened, had happened," and the magistrate, that he said, "it was about a theft business to say nothing about it." He denied both statements before this court. So Boodhoo prosecutor (as did also Juggoo prosecutor before the magistrate) told the police that there was a grazing grudge of some five years' standing, between the deceased and the prisoner, but denied by him before the magistrate and this court. Whilst Juggoo Gwalla's statements regarding the quarrel in the liquor shop is denied by the vender Akbar Alli (witness 12,) although he deposes to all three having been in the liquor shop together. This person like Dumree Passie (witness 4,) seemed an unwilling witness and, as shewn by his equivocation, determined not to speak out. Where so much equivocation and concealment obtains on such a point, the real origin is most likely one which neither party chooses to disclose, and the nearest approach to it is perhaps the prisoner's accusing them of being thieves rendering it very possible, considering their class, that it has in reality been the revengeful chastisement of one thief by another. Be this as it may, there can be no doubt of the brutal character of the assault, and if proof is wanting as to its having been premeditated with the intent to deprive a fellow creature of life, still the pinioning of the victims, and the results obtained by the *post mortem* examination, sufficiently prove that no such beating could have been inflicted otherwise than in a grossly revengeful spirit, to do grievous bodily injury, with as few visible external marks of violence as possible, so well known and practised in this part of the country as "*bitur mar*"* and apparently personally directed against the deceased, when his companion Juggoo escaped comparatively uninjured. I do not regard the prisoner's dragging the helpless deceased inside the monastery as in any degree ex-

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terminating his offence; as a chowkeedar he may have cunningly designed such an act, in order to frighten or bring trouble on its inmates, in aid towards the concealment of his own crime, for he adopted this line of defence from the first, which doubtless had secured to him beforehand, owing to the remonstrances of so many eye-witnesses on the spot. I refer this case, consequent on my convicting the prisoner of the extremely aggravated culpable homicide of the deceased, and would recommend his being sentenced to fourteen years' imprisonment in labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The Court, in concurrence with the *futwa* and the sessions judge, convict the prisoner of aggravated culpable homicide and sentence him, as recommended, to fourteen years' imprisonment with labor in irons in banishment.

PRESENT:

SIR R. BARLOW, BART., *Judge*.

GOVERNMENT,

versus

Backergunge. ESHURCHUNDER DOSS (No. 20,) GOLUCK HALDAR
(No. 21,) RAMSOONDER BHOOMALEE (No. 22,) AND
1854. GOPAL KISHTO DUTT (No. 23.)

March 7.

Case of
ESHURCHUN-
DER DOSS and
others.

Four prison-
ers convicted
by the sessions
judge of per-
jury, regarding
the identity of
a person
charged with
riot attended
with murder,
who had evad-
ed justice for
some time.
In appeal the
conviction of
three prisoners
upheld and of
one reversed.

CRIME CHARGED.—1st count, perjury, in having, No. 20, on the 20th March, 1850, and No. 21, on the 23rd of March, 1850, intentionally and deliberately deposed under solemn declaration, taken instead of an oath before the late officiating magistrate of Backergunge, that they saw the prisoner, Doyanath Bose, engaged in the riot attended with the murder of Ruheemooddeen, and in having, on the 30th May, 1853, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the present magistrate of Backergunge, that they did not see the prisoner, Doyanath Bose, engaged in the said riot, such statements being contradictory of each other on a point material to the issue of the case; 2nd count, perjury, in having, Nos. 20 and 21, on the 30th of May, 1853, deposed under a solemn declaration taken instead of an oath before the magistrate of Backergunge, that they did not see the prisoner, Doyanath Bose, engaged in the riot attended with the murder of Ruheemooddeen, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case; 1st count No. 22, perjury, in having, on the 20th of March, 1850, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the late officiating

magistrate of Backergunge that he saw the prisoner Doyanath Bose, engaged in the riot attended with the murder of Ruheemooddeen and in having, on the 30th of May, 1853, again, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the present magistrate of Backergunge that the prisoner, Doyanath Bose, is not the Doyanath Bose whom he saw engaged in the riot attended with the murder of Ruheemooddeen, such statements being contradictory of each other on a point material to the issue of the case; 2nd count, No. 22, perjury, in having on the 30th of May, 1853, deposed under a solemn declaration taken instead of an oath before the magistrate of Backergunge, that the prisoner, Doyanath Bose, is not the Doyanath Bose, whom he saw engaged in the riot attended with the murder of Ruheemooddeen, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case; 1st count, No. 23, perjury, in having, on the 20th of March, 1850, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the late officiating magistrate of Backergunge, that the prisoner, Doyanath Bose, had before the occurrence of the riot threatened to plunder his house or the Tuhsil cutcherry, and in having on the 30th of May, 1853, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the present magistrate of Backergunge that the prisoner, Doyanath Bose, did not threaten to plunder his house or the Tuhsil cutcherry, before the occurrence of the aforesaid riot, such statements being contradictory of each other on a point material to the issue of the case; 2nd count, No. 23, perjury in having on the 30th of May 1853, deposed under a solemn declaration taken instead of an oath before the magistrate of Backergunge, that the prisoner, Doyanath Bose, did not threaten to plunder his house, or the Tuhsil cutcherry before the occurrence of the aforesaid riot, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 21st November, 1853.

Remarks by the sessions judge.—This case arose out of that

* Decided on the 9th of Doyanath Bose.* The prisoners March, 1854, by the Nizamut Adawlut. See page 307 are the persons alluded to in my remarks on that case, as those who refused to recognise the party, whom they had before asserted to have been seen by them in a certain riot.

The right party was placed before the prisoners, I have held to be proved beyond all doubt. The only question is, have the

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prisoners wilfully refused to recognize him? Each man in his former deposition not only made mention of the prisoner by name, but they were so well acquainted with him, from previous knowledge, that they also named the place of his abode. When questioned as to who the party was whom they called Doyanath, they answered that he was a servant of Muthoor Shah, an up-country man, who quitted the place after the riot. But Muthoor Shah lived in Buropakea, whereas the Doyanath made mention of, lived in Raibudderdee, and had there been such a man as Doyanath, the up-country man, it is quite beyond belief that he would have left any property behind him for the police to attach, and equally out of the question is it to suppose, that any other Doyanath but the real offender would submit to the seizure of his property, and suffer himself to be under the imputation of guilt, when he had nothing to do with the case. It is, indeed, quite impossible to reconcile the prisoner's innocence with Doyanath's identity. Allowing that Doyanath is the person who participated in the riot, and there can remain no question but the prisoners have deliberately perjured themselves in refusing to identify him.

The law officer found them guilty, and I sentenced them to the usual term of three years' imprisonment.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) This prisoner No. 20, Eshurchunder, in his deposition in 1850, before the magistrate, swore to the presence of Doyanath Bose at an affray in which Ruheemooddeen was killed and others wounded; he also mentioned the village in which the said Doyanath resided, namely, Koree Bhudderoodeen.

No. 21, Goluck Haldar swore also to the presence of Doyanath on the occasion.

No. 22, Ram Soondar deposed to the same effect, adding that Doyanath was resident of Koree Bhudderoodeen after Doyanath's apprehension in May, 1853, on being brought up again as witness against the prisoner.

No. 20, Eshurchunder denied all knowledge of Doyanath.

No. 21, Goluck made similar deposition.

No. 22, Ram Soondar said Doyanath was the prisoner's name, but he was not concerned in the affray.

They were then charged with perjury on the 22nd June, and put on their defence, were committed in August and convicted in November last.

Several witnesses, who also were examined in 1850, on the former trial have sworn to the identity of the prisoner Doyanath, whose case has this day been disposed of, and others also who now appear for the first time, have sworn that the prisoner is the identical person who was named in 1850, and that there is no other nor was there any other Doyanath in the said village, Koree Bhudderoodeen, and that ever since the occurrence of the murder he has absconded.

Taking all the circumstances into consideration, there can be no doubt that the witnesses did in 1850, swear to the presence of Doyanath of Koree Bhudderoodeen on the spot in the affray; and that the identity of the prisoner convicted on the trial this day finished, is clearly proved. It is also proved that the prisoners gave the depositions in 1850, that Doyanath is the Doyanath and that the prisoners now deny all knowledge of him. Stronger evidence than this cannot be offered in this case, others recognise him and mention him as the party accused. Some prove there is no other Doyanath in the village and the only reasonable conclusion to be drawn is, that the prisoners have designedly, with the view to screen the prisoner, foresworn themselves.

I concur with the sessions judge and the law officer in the conviction, and confirm the sentence. The prisoner No. 23, Gopal-kishen at no stage, swore to the recognition of the prisoner, the evidence is insufficient against him, he is acquitted and released.

PRESENT:

SIR R. BARLOW, BART., and
H. T. RAIKES, Esq., Judges.

GOVERNMENT,

versus

IBRAHIM (No. 3.) AND NUDARO JUMMAH (No. 5.)

Chittagong.

CRIME CHARGED.—1st count, forgery, in having deliberately and knowingly prepared or caused to be prepared, with intent to injure Shanud Ali, witness No. 1, a false *tahoodnamah*, dated 10th Srabun, 1213, M. S., and therein fraudulently signed or caused to be signed the name of the said Shanud Ali; 2nd count, defendant, No. 3, is charged with causing the aforesaid *tahoodnamah* to be uttered and filed in the office of Baboo Gofir Kishore Roy, deputy collector, by defendant, No. 6, knowing it to be forged.

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Case of
IBRAHIM and
another.

Two prisoners
charged with
forgery, whom
the sessions
judge wished
to convict in
opposition to
the *fatwa* of
the law officer,
acquitted by
the Court.

Committing Officer.—Mr. J. R. Muspratt, magistrate of Chittagong.

Tried before Mr. O. W. Malet, officiating additional sessions judge of Chittagong, on the 24th January, 1854.

Remarks by the officiating additional sessions judge.—The law officer, with whose assistance I tried the case, has given his *fatwa* for acquittal, whereas I consider that defendants Nos. 3 and 5, are guilty. The case was first brought to the notice of the magistrate by a deputy collector, in whose court the *tahoodnamah* said to be a forgery, was entered by the mooktear of defendant No. 3, in a summary suit for money said to be due to him from his tehsildar, witness No. 1.

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Case of
IBRAHIM and
another.

The evidence for the prosecution shews that the signature of witness No. 1, is a forgery, that the tendering of the whole deed would have

Witness, No. 1.

been injurious to him, also that several persons were requested by the defendants to be witnesses to the deed, which they refused on account of the absence of the principal party during its preparation, which they saw in part, one man stating that though his name was written as a witness that he was not present, other evidence

* Acquitted.

Witnesses Nos. 6, 7, 8, defendants Nos. 3,* 4, 5, especially that No. 9, 10, 11, 12 and 13. 4,† is a noted forger, and that they had

† Acquitted.

been before guilty of bad conduct of the same character, though never convicted.

The entry of the document, but not the guilty knowledge, is

Witnesses, Nos. 14, 15, proved against defendant No. 6,‡ one witness was absent, whose evidence would

16.

‡ Acquitted.

Witness No. 17.

have been of some importance, if the same as that given before the magistrate, that the paper had been given to him to enter, but refused on account of its being a forgery.

Defendant, No. 3, confesses to having caused the utterance of the paper, and No. 5 to having written it, but declare it to

§ Acquitted.

|| Acquitted.

be a *true* paper, No. 4,§ denies all and any thing about it, No. 6|| allows that he entered the paper, supposing it to be a true document.

The natural evidence, for this line of defence, would have been the parties whose names were written at the foot of the deed as witnesses to its execution, but as they also were sent up to take their trial for perjury, it is but charitable to suppose, that it was thought their evidence would not be accepted, the defendants have therefore merely called witnesses to character, and to prove the enmity towards them and other unworthy motives of the evidence for the prosecution, this to a certain extent, certainly does shew, their own witnesses also give the defendants a good character, but one witness unconsciously speaks against his own party, by stating that the witness, No. 1, was in the habit of collecting by *chitti*. *

I sent for the under-writers of the *tahoodnamah* (who had been acquitted by the magistrate) as witnesses, they gave this evidence in such a manner and were people of such low stamp, Witnesses, Nos. 37, 38 (it being usual to get rather respectable persons as witnesses to deeds of this sort) and 39.

that I could not possibly believe that they were present at the execution of the deed; out of all the facts and circumstances of the case that occurred at the time, the signature of Shamut Ali, witness No. 1, and the writing by Nadir defendant, No. 5, are the only points on which they agree. I had also copies of the

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deed made from dictation by defendants, Nos. 4 and 5, this evidence on which I do not myself place much weight, shewed that defendant No. 5, was the writer.

There are several documents entered which would, had they been proved, have tended to show that the paper must be a forgery, but they have not been, nor could they well have been, so it is unnecessary for me to do more than mention them.

On looking over several of the cases of forgery in the Nizamut Adawlut reports, I find that in nearly all of them, there has been the same difficulty of getting proof, as I have found in this case, I therefore put the case as I consider for the prosecution and defence in parallel lines.

Prosecution.

That is a forgery sworn to.

Seven witnesses to the fact of its being a forgery, of these Nos. 1, 2, 4, 7 may, I think be depended on.

Signature of witness No. 1, as on the deed, differing from that on other papers.

Bad character with special instances given by witnesses above suspicion.

Common report very strong, that is a forgery.

Taking all the circumstances into consideration, I find defendant, No. 3, guilty of causing a *tahoodnamah* to be forged and also to be uttered, with intent to injure, and would sentence him to five years' imprisonment.

I find defendant, No. 5 guilty of the fact of forging a false *tahoodnamah* and being a party to the utterance of the same, and would sentence him to three years.

I acquit the other two prisoners, but have directed defendant,

* Acquitted. No. 4,* to be called on for security under Regulation VII. of 1818, as a person it would be dangerous to allow to be at large. I may mention that forgery was formerly rife in this district, and is said to be again increasing.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. H. T. Raikes). The presence of the witnesses is quite unaccountable, though the prosecutor says he searched on all sides and found them. It is quite incredible that so many persons should so openly be guilty of a forgery. The law officer acquits the prisoners judging of the probabilities of the case, while the sessions judge would convict them, as shewn in paragraphs 10 and 11, of his report. We concur with the law officer in his verdict of acquittal, and order the immediate release of the prisoners.

Defence.

Denial.

Three bad witnesses to the fact of its being a true document.

Improbability of defendants entering a paper to which they had unsuccessfully asked several persons to be witness.

Good character by several witnesses in general terms.

Enmity of witnesses Nos. 1, 3 and 13, asserted, but not proved.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

KASEE KUR AND GOVERNMENT,

versus

Midnapore.

BEROO BARRICK.

1854.

March 8.

Case of
BEROO BARRICK.

CRIME CHARGED.—With having wilfully administered in sweetmeat a certain deadly poison, name unknown, such being a poisonous or deleterious drug, to the prosecutor and to witnesses Nos. 1, 2 and 3, with the intention to commit murder.

CRIME ESTABLISHED.—Administering in sweetmeat, a certain deadly poison.

The prisoner was identified as the party who had administered drugs to the prosecutor and others, five years before apprehension.

Committing Officer.—Moulovee Wuheedun Nubee, deputy magistrate exercising powers of a magistrate at Nugwa.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 15th December, 1853.

Remarks by the sessions judge.—The prisoner pleads “*not guilty*.” The prosecutor deposes that on the evening of the 15th June, 1848, the prisoner came to his house as he was in the habit of doing, bringing some sweetmeats with him. These he distributed amongst himself (the prosecutor) his wife and his children, the two former and one of the latter partook of them and in a very short time afterwards, became insensible. The darogah hearing what had occurred, immediately went to the spot and finding the parties in a helpless and senseless condition, caused them to be conveyed to the hospital at Contai, where they were placed under the treatment of Dr. Baillie. That officer’s attendance in this court has not been secured, owing to his transfer to another district, but his reports to the magistrate of the 17th and 27th June, 1848, give a succinct and clear account of the poisoned persons when brought to him for treatment. He observes, “I found a man, a woman, and a child (girl) (the prosecutor and the witnesses Nos. 2 and 3) all exhibiting similar symptoms, though different in degree, of having taken some narcotic; they were unable to stand, to see, to hear, or to speak, in fact they were insensible; by means of the usual remedies employed on such occasions, I succeeded after some time in somewhat restoring the man, but some hours elapsed, during which most persevering efforts were had recourse to, before the child and lastly the woman were sufficiently recovered to be able to stand or to be made aware of their situation. They are all now convalescing, though I consider that at one period the woman was in a very precarious state. In a demi-official letter he remarks, as to the poison taken, “I am inclined from the nature of the symptoms to consider that it was *Datura*, the

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tongue was remarkably dry and as they recovered, their movements were most grotesque and positions absurd, they grasped at imaginary objects and aped the act of eating, &c. &c. these symptoms are all or most of them present, on the injection of that class of poisons of which the *Datura* forms a part: I should have determined the matter by analysis, although at all times difficult, but length of time which elapsed ere I saw these parties, and difficulty I experienced in evacuating the stomach's contents with which too, the drugs I administered were mixed, prevented my so doing." The witnesses Nos. 1, 2 and 3, corroborate the prosecutor's statement, that the prisoner gave them the *methies* or sweetmeat to eat, and that he left their house before the poison began to have any influence. They further depose, that the prisoner was a barber by trade and in the habit of shaving the prosecutor, that he wished to borrow money from prosecutor, who refused to lend it, and in revenge the prisoner poisoned them all with the intention, they believe, of robbing the house. Of the prisoner's intention to rob there is no evidence, but the presumption is very strong that he gave the prosecutor and his family sweetmeats, knowing that they contained some poisonous drug, with the view of depriving them of life or rendering them totally insensible. His subsequent conduct is corroborative of his guilt, as immediately after administering the poisonous sweetmeats, he absconded and was not apprehended till 1st September, 1853, or five years after a warrant for his arrest had been issued. In his defence he endeavours to escape the responsibility he has incurred, by pleading that his name is Ekadusee and not Beroo Barrick, but the evidence of his identity as Beroo Barrick is clear and conclusive, and he fails to impugn it. The assessors declare the prisoner guilty of the charge on which he is arraigned and concurring in this verdict, the court sentence him as indicated in the statement.

Sentence passed by the lower court.—Seven years' imprisonment, and two years' more in lieu of corporal punishment. Total, nine years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The prisoner was accused, at the time of the commission of the offence in 1848, and is fully recognised to be Beroo Barrick, not Ekadusee Barrick, as he now calls himself. Indeed several of his own witnesses say, that they only know him to be Ekadusee from his calling himself so, and it is probable that he assumed that name to prevent apprehension. I reject the appeal, and confirm the sentence.

The sessions judge should have added to the conviction "with the view of depriving of life," according to his own remarks. I also draw attention to Circular Orders, No. 83, dated 24th March, 1841, and the Circular Orders referred to therein, as pointing out how charges of this character should be framed.

PRESENT:

A. DIGK, Esq., Judge.

GOVERNMENT AND NIMCHUND OOPADHIA,
versus

Behar.

MUSST. KUMLEE KAHARIN.

1854.

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Case of
Mussumut
KUMLEE KA-
HARIN.

CRIME CHARGED.—Severely wounding Sookree girl (the grand-daughter of the prosecutor) on the throat, with intention to kill for the purpose of robbing her of the ornaments on her person.
Committing Officer.—Mr. A. G. Wilson, deputy magistrate, sub-division Norvada of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 18th January, 1854.

Prisoner convicted of severely wounding a child with intent to murder it for the sake of its ornaments, & sentenced to imprisonment for life.

Remarks by the sessions judge.—Sookree, a little girl about eight years of age, the prosecutor's granddaughter, wearing silver and other ornaments, worth about 25 to 30 rupees, on the afternoon of 3rd November last, was playing in the lanes of village of Panditpore with another little girl,* about the same age, but whose depositions consequent on nonage were not taken before this court, when the prisoner, also resident of the same village, enticed her away, promising to give her some fruit to eat.

* Witness No. 10, Tool-shee Sookree, herself before the deputy magistrate.

† Witness No. 1, Pattassia Kaharin.

‡ Witness No. 9, Pegna Kaharin.

Witness No. 1, † the prisoner's step-sister, living together in the same dwelling, happened to be preparing parched rice, some little distance outside in company with witness, No. 9, ‡ when thinking she heard a child's cry in the house, she went there and finding the screen across the prisoner's door-way, she withdrew it, and saw the prisoner on the ground in the act of cutting the child's throat with a sickle. The prisoner sprung up, the child rushed out, with her throat cut, but with all her ornaments on her person, first to witness No. 9, and thence to her home close by. In the meantime the alarm being at once given, the prisoner was immediately apprehended in a lane, a short distance off from her own dwelling, by the witnesses noted in the margin, § with stains of blood on her clothes. The bloody sickle was picked up by witness No. 5, inside the prisoner's room, whose blood spots also marked the scene of the heartless deed.

§ Witness No. 2, Puqueria Kahar.

Witness No. 3, Bhultun Kandao.

Witness No. 4, Zurawar Lall.

Witness No. 5, Bhultun Doosadh.

|| Witness No. 14, Dr. Diaper.

Witness No. 14, || deposes that "Sookree had an incised wound about

4 inches long transversely across the upper part of the throat, just above the *pomum adami*, extending to literally within an hair's breadth of the carotid artery of both sides. It is difficult to realize the idea of so narrow an escape of life."

Before the police the prisoner confessed her intent to kill the child for the sake of her ornaments, which has been verified by the attesting witnesses. She revoked such confession, however, both before the deputy magistrate and this court by throwing the crime on Patassia (witness No. 1,) un-

accompanied by any plausible explanation even in her fresh addition before this court, as to Patassia's having been aided in the crime by her lover, and accused her, because she had detected them in an intrigue, an inconsistent story in itself.

She called three witnesses before this court, all of whom deposed to having heard that the prisoner had committed the deed.

The *futwa* of the law officer, hesitating on the testimony of a woman, yet under all the circumstances of the case, together with the prisoner's confession, convicted her of the crime charged on strong presumption and declared her liable to discretionary punishment by "*akoobut*."

Witness No. 1's evidence is conclusively corroborated by that of the witnesses Nos. 2 to 9 amply sufficient; I consider, to establish the prisoner's conviction of the crime charged, whilst her subsequent inconsistent, improbable defences, tend to confirm her original confession before the police. I can find no reason to doubt her guilt, or regard the crime other than of the darkest kind, for to all moral intents and purposes, she had, as far as in her power lay, deliberately committed the cruel deed, when, according to Dr. Diaper, "it is difficult to realize the idea of so narrow an escape of life," alone timely saved by Patassia's (witness No. 1,) providential interruption.

The accidental interference of another, alone stayed her from becoming a murderess in deed as well as in intent, and I am much at a loss to recommend any punishment adequate to such a heartless crime short of imprisonment for life in labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The Court, in concurrence with the *futwa* and the sessions judge, convict the prisoner Mussumut Kumlee of severely wounding Mussumut Sookree, a child about eight years of age, by cutting her throat with intent to murder for the sake of the child's ornaments, and under the circumstances of the case, sentence the said

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Case of
Mussumut
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1854. Mussumut Kumlee to imprisonment for life with labor suited to her sex, as recommended by the sessions judge.

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Case of
Mussumut
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HARIN.

The Court observe, that it was from no compunction of the prisoner, that the cruel murder was not perpetrated. An accidental interruption from another person, alone saved the child's life.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

DHOOKUN SAHOO AND GOVERNMENT,

versus

BHOOEAH.

Hazareebagh.

1854. CRIME CHARGED.—1st count, accomplice on a highway robbery attended with assault; 2nd count, knowing the above fact; and 3rd count, keeping the above robbed property in his possession.

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Case of
BHOOEAH.

CRIME ESTABLISHED.—Accomplice on a highway robbery attended with assault, and knowing the above fact.

The conviction of the prisoner on two counts of accompliceship and privacy at a time, held to be erroneous.

Committing Officer.—Moonshee Dubberodeen Ahmed, deputy magistrate of Burhee.

Tried before Major J. Hanyngton, deputy commissioner, Chota Nagpore, on the 31st December, 1853.

Remarks by the deputy commissioner.—Soomer and Anant, servants of Mohun Sahoo, were carrying Rs. 414 from the prosecutor, who is the agent of the said Mohun to their employer at Rajowlee; they left Hazareebagh on the morning of the 24th October, and on the road towards Burhee, fell in with the prisoner and three or four others, who after proceeding some distance, attacked them and robbed them of the money. Information was given the same day and on enquiry being made, the evidence of persons, who had seen the prisoner and others on the road, led to the apprehension of the prisoner. He then made confession before the police officer to the effect, that he had seen the robbery committed, and that he had received 15 rupees from Khoda Bux, one of the robbers. Before the deputy magistrate, the prisoner limited his confession to having seen the robbers run away. It is, however, clearly proved by the evidence of Soomer, and that of witnesses, who, on the morning of the day in question, saw the prisoner in company with the men, whom he describes as having committed the offence, that he was with them, and Soomer states that the prisoner actually took part in the robbery. A piece of dyed cloth, in which the money had been tied was found, in searching the prisoner's house. The

prisoner has made no substantial defence. The jury find the prisoner guilty, as charged on three counts.

I concur in finding the prisoner guilty on the 1st and 2nd counts, but I do not consider that the evidence sufficiently establishes the 3rd. The prisoner was accordingly sentenced as shown.

Sentence passed by the lower court.—Five (5) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The prisoner in his appeal acknowledges privity to the robbery, but complains of being convicted, while the others who committed it, had not been put upon their trial. The evidence, however, is sufficient to prove accompliceship in the robbery against the prisoner, of which I accordingly convict him, and uphold the sentence passed by the deputy commissioner.

It is presumed that by the 2nd count, "knowing the above fact," privity is intended. If so, this term should have been employed. But a conviction on both counts of accompliceship and privity is improper, as a person can only be guilty of one or other, but not of both at a time. The two offences are very different in character and degree. See Circular Orders No. 8, dated 7th June, 1847.

PRESENT:

SIR ROBERT BARLOW, BART., Judge.

GOVERNMENT,

versus

DOYANATH BOSE.

CRIME CHARGED.—1st count, wilful murder of Ruheemoodin; 2nd count, riot attended with culpable homicide of Ruheemoodin and the wounding of Goluck Halder and Sheik Noyan, and 3rd count, illegal duress of Eshurchundur Dass, Gouchundur Sirkar, Mohesh Bhundaree and Ram Soondar Bhoimalee.

CRIME ESTABLISHED.—Riot attended with the culpable homicide of Ruheemoodin.

Committing Officer.—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 21st November, 1853.

Remarks by the sessions judge.—The trial of the case in which the prisoner is charged with having taken a part, was first held at the sessions of this district for May 1850, (case No. 3.)

The judge by whom that trial was held, thus described the case, "It appeared that the prosecutor, and witness, No. 5, Gour-

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Case of
БНОБЕАН.

Backergunge.

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March 9.

Case of
DOYANATH
BOSE.

Prisoner convicted of not attended with culpable homicide and sentenced to five years' imprisonment. Prisoners defence of alibi and mistaken identity clearly exposed by the sessions judged. Appeal rejected.

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BOSE.

chundur Sirkar were gomashtas of Ramseewuk Sein, Ousut talookdar, within the talook of Bindrabunchundur; prisoner No. 1 had formerly been in the service of Ramseewuk Sein, but was now the *naib* of the talookdar. Prisoners, Nos. 2 and 3, were the *ryuts* of the Ousut talookdar, Ramseewuk Sein, and when the latter prisoner was called upon for his rent as a *ryut* he declared that he had sold his *kowla* tenure to the talookdar, Bindrabunchundur Chowdree, who refused to pay any rent unless he received a *dakhala*, recording that particular tenure, so that this dispute added to petitions from prisoners, Nos. 2 and 3, against their Ousut talookdar for forcible-detention and a counter-petition from the Ousut talookdar against prisoner No. 1, to the same purport on behalf of one of his *ryuts*, produced a very bad feeling between the parties concerned. The statement of the prosecutor was to the following effect; that on a Tuesday night, the 26th Phagoon last, he and witnesses, No. 1, Goluck Haldar, No. 2, Sheik Noyan, No. 3, Kadir peadah, No. 4, Kishore Singh burkundaz, No. 5, Gouchundur Sircar, No. 6, Mohesh Bhandarce and Ruheemoodin, deceased, were sleeping in their master's cutcherry at Baropakia, which was held in a house belonging to witness, No. 11, Gopal Kishen Dutt; that about 2 or 3 *ghurrees* before day-light, about fifty or sixty persons, armed with spears and *lattees*, amongst whom he recognized the prisoners, attacked the cutcherry, dragged them out of the house and plundered the papers; that in the scuffle, Ruheemoodin peadah was killed and Goluck Haldar and Sheik Noyan, wounded; that the prosecutors and witness, No. 5, and witnesses, Nos. 6 and 7, who live close by, were forcibly removed to another village about two *puhurs* off, belonging to Bindrabun Chowdree, where they were detained under surveillance and only released by the rumoured arrival of the police; that through the assistance of witness, No. 25, Abbass Jollah, and witness, No. 26, Kabil Jollah, on the night of the 29th Phagoon, information was given to Ramseewuk Sein, who sent persons to escort them to his house; that witnesses Nos. 5 and 7, proceeded to the thannah almost immediately afterwards, and the next day the prosecutor and witness No. 6, were also on their way to the thannah, when they met the mohurir, by whose directions they proceeded to 'Baropakia, the scene of the outrage, where the darogah had commenced his enquiries,' the prosecutor could not state by whose hands Ruheemoodin, deceased, had been deprived of life, but at the time he was being dragged out of the cutcherry, he heard a sound, as if proceeding from Ruheemoodin, and also one of the rioters call out that some one had been killed and heard Goluck Haldar, witness, No. 1, and Sheik Noyan, witness, No. 2, exclaim that they were wounded."

The prisoner was named from the very beginning as being one of the most conspicuous of the actors.

On his recent apprehension he was committed for trial before the sessions, where he has been identified as the person of that name, who was originally alleged to have taken a part in the riot.

His defence is, that he is not the same Doyanath, and he pleads that he executed a bond in Mymensing the very day previous to the riot, upon which bond, a suit was brought and judgment given against him in one of the moonsiff's courts of that district. He affirms further that the real Doyanath was a servant of one Mothoor Shah of Baropakia village, where the riot occurred.

As often happens in this district, where an accused party is a man of some means, and has managed to elude apprehension till the disputes between the parties have subsided, the witnesses first sent in, refused to identify the prisoner. They were detained on a charge of perjury, and other witnesses, of whom there were many, were sent for. The evidence of these having clearly established the identity of the prisoner, he was committed.

The jury considered there could be no doubt that the prisoner was the same person as before alluded to, and they accordingly found a verdict of guilty.

I quite agree in the verdict. That a man by name Doyanath, was a principal actor in the riot was established, by evidence beyond all question. That Doyanath at the bar is the very same person, referred to in the evidence, is also put beyond any kind of doubt.

The execution of a bond in Mymensing, with a date to suit any purpose the parties had in view, is an artifice of too common, but fortunately of too flimsy a nature, not to be easily seen through. Setting aside then that document, as any proof of the *alibi*, I proceed to give the grounds on which I hold it satisfactorily established, independent of the direct proof afforded by the oath of several respectable witnesses, that the prisoner is the very Doyanath originally alluded to in the evidence of almost every witness examined on the first trial.

He allows that he lives at Raiebudderdec, and that his brother is one Loaknath. Now, the Doyanath originally mentioned was said to live at Raiebudderdec. Thrice has the property of Doyanath of Raiebudderdec been attached, with a view to induce him to give himself up; now the police do not attach property at hap-hazard, but after adequate inquiry that the property seized belongs to the person for whom they are in search; on the two first occasions, the property was small, but still people are not found quietly to allow their property to be seized in mistake for another, and as no opposition was made against the attachments, it follows that the police attached the property of the right man; that man was infallibly the prisoner. As I remarked above, the prisoner calls Loaknath his brother. Now

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in Loaknath's name there is a talook of which a one anna share belonging to Doyanath was attached. Whatever little doubt might rest, as to whom the property belonged in the two first attachments, there can exist none in regard to this last, but as in the two first instances, so in the last, no opposition was offered, nor was objection made, that the property did not belong to the party who had any thing to do with the riot; that the property of Doyanath, brother to Loaknath, was attached, and that that measure produced no remonstrance, puts it beyond doubt that the prisoner is the very man, who has all along been named as deeply implicated in this case.

There is further evidence that besides this Doyanath, there was no other person of that name in Raiebudderdee; there is also evidence that the prisoner is related to Bindrabun, between whom and Ramseewuk Sein the quarrel existed, out of which the riot arose, and it is admitted on his part that he quitted his home about the time this affair happened.

The prisoner's identity being therefore clear, and there being ample evidence to shew that he was in the riot, I convicted and sentenced him as shown in the statement.

I may mention that so thoroughly had the prisoner arranged matters to secure his exculpation, that the very same jemadar, who had twice attached his property, subsequently reported that the prisoner was not the person to whom it belonged. He was properly dismissed from the police for this gross collusion.

Sentence passed by the lower court.—Five (5) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) I see no reason to interfere with the sessions judge's orders. The prisoner was named by several witnesses in 1850, and from the day of the occurrence he absconded. He attempts to establish his presence at Mymensingh, on the strength of a decree passed by the moonsiff of Pingna against him for 41 Rs. *ex parte*. Such a plea is of no avail. The prisoner's property was on several occasions attached, but he never appeared; he has at length been apprehended and pleads not guilty. The petition of appeal is rejected, and the judge's order upheld.

PRESENT :

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT,

versus

Chittagong.

NOORO JUMMAH (NO. 4, APPELLANT) AHMUD ALI,
MOOKTEAR (NO. 6.)

1854.

CRIME CHARGED.—Prisoner No. 4, forgery, viz. in having deliberately and knowingly prepared or caused to be prepared with intent to injure Shamed Ali, witness No. 1, a false *tahood-namah*, dated 10th Srabun, 1213, MS. and thereon fraudulently signed or caused to be signed the name of the said Shamed Ali; prisoner No. 6, 1st count, uttering and filing the said forged document, with the above false signature in the office of Baboo Gour Kishore Roy, deputy collector, knowing the same to be a forgery.

March 9.
Trial of
NOORO JUM-
MAH and ano-
ther.

A prisoner charged with forgery, was acquitted by the sessions judge, but that officer directed him to furnish security for his good behaviour during one year, or to be imprisoned for that period, as being a person of known bad character. It was held by the Court that the provisions of Regulation VIII. of 1818, apply only to offenders of the classes specified in Sections 9 and 10 of that law, viz. persons by habit robbers, burglars, or thieves, or vendors or receivers of stolen property, and notorious gang robbers of dangerous character.

Committing Officer.—Mr. J. R. Muspratt, magistrate of Chittagong.

Tried before Mr. O. W. Malet, officiating additional sessions judge of Chittagong, on the 24th January, 1854.

Remarks by the officiating additional sessions judge.—Prisoner No. 4, was sent up on a charge of forgery; several witnesses spoke to his having been seen by them in the act of writing a forged document, but this part of the evidence from other circumstances of the case, I could not credit, I have therefore as far as regards this man, agreed with the law officer in his acquittal; but the whole of the evidence is so very strong as to his being a known bad character, that I have directed the magistrate to make the enquiry directed in Regulation VIII. of 1818, regarding him.

Prisoner No. 6, was accused of uttering the above document, knowing it to be a forgery, it is fully proved that he did as it is said, enter it in a deputy collector's office, but there is nothing to shew that he had any knowledge of its being a forgery, at the time he did so enter it. The man also bears a good character, his acquittal by the law officer was concurred in by me.

Remarks by the Nizamut Adawlut.—Present: Mr. H. T. Raikes.) The prisoner appealing, was originally committed on a charge of forgery and acquitted by the officiating additional sessions judge, in concurrence with the *futwa*.

In the statement of acquittals, forwarded to the Nizamut Adawlut, the officiating additional sessions judge states, that as the prisoner was shewn by the evidence to be of known bad character, he had directed the magistrate to make the enquiry directed by Regulation VIII. of 1818, regarding him.

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mah and ano-
ther.

The vernacular papers, however, show that the officiating additional sessions judge did not order the magistrate to make these enquiries, but at once directed the prisoner to furnish security to a certain amount, for his good behaviour during one year, or to be imprisoned for that period. It is from this order the prisoner has appealed.

I have perused the evidence taken before the sessions, which independent of that part relating to the specific crime for which the prisoner was brought to trial, contains allegations of his having been concerned in several forgeries and being habitually engaged in such malpractices.

The question which occurs to me is, whether notorious participation in offences of this nature, brings the prisoner within the provisions of Regulation VIII. of 1818, and warrants the sentence of imprisonment in default of giving the security required from him.

Section 2, Regulation VIII. of 1818, empowers the judges of circuit to require security from prisoners, acquitted of the specific charge brought against them, "when from the evidence on the proceedings they appear to be of notoriously bad or dangerous character," but the particular class of offenders to which the law is intended to apply, is distinctly alluded to in Sections 9 and 10, of the Regulation, and these sections are moreover pointed out as those containing rules for the guidance of the courts of circuit when giving practical effect to the provisions of the Regulation.

In these sections, it is distinctly declared, that prisoners who are shewn to be by *habit robbers, burglars, or thieves, or vendors, or receivers of stolen property* may be sentenced to imprisonment for a definite period, in default of giving the security required from them, and *notorious gang robbers* (dacoits) *of dangerous character* for an indefinite period under the same circumstances, it is therefore only to this class of offenders that the law applies.

The mere fact of the prisoner being a known bad character, is not in my opinion sufficient, unless the acts and habits attributed to him show that he is an habitual participator in robbery or theft or the sale or receipt of stolen property.

Since, in the case of the appealing prisoner, no such offences as these have been alleged against him, I do not consider the infamy of his character arising from other sources of crime, can subject him to proceedings under Regulation VIII. of 1818, and I therefore direct his unconditional release.

PRESENT :

B. J. COLVIN, Esq. *Officiating Judge.*

GOVERNMENT,

versus

BHEEKAREE PRAMANICK (No. 1.) MOGUL NUSHO,
(No. 2,) AND GYESHAH PAEEKAR (No. 4.)

Rungpore,

1854.

CRIME CHARGED.—1st count, committing burglary in the house of Futtey Pramanick, and stealing therefrom property valued at Co.'s Rs. 13-3-6, and on a second count, having in their possession property acquired by the said burglary, knowing it to have been so obtained.

March 10.
Case of
BHEEKAREE
PRAMANICK
and others.

CRIME ESTABLISHED.—Committing burglary in the house of Futtey Pramanick, and stealing therefrom property valued at Co.'s Rs. 13-3-6.

Committing Officer.—Mr. R. H. Russell, officiating joint-magistrate of Bograh.

Tried before Mr. William Bell, sessions judge of Rungpore, on the 3rd January, 1854.

The prisoners' appeal rejected in consequence of their recognition by the prosecutor, and his property being found in their houses.

Remarks by the sessions judge.—This was a simple case of burglary, occurring in thannah Bograh on the 8th of October last. It is established by the deposition of the prosecutor and witnesses that the prosecutor's house was broken into, on the night in question, and that he recognised Bheekaree, Mogul and Gyeshah at the time, and that in searching their houses property stolen at the time was found, the case was sent to the sessions in consequence of Bheekaree being a notorious *budmash*, and having been once confined in jail in default of security for good conduct, under which circumstances the joint-magistrate considered him deserving of more severe punishment, than he could inflict.

The prisoners in their defence plead *not guilty*, and claim the property found in their houses; that their witnesses all fail in establishing their claim.

The law officer convicted on the 1st count, and I agree.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons No. 1, for five (5) years and Nos. 2 and 4 for three (3) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I see no reason to interfere with the sentence passed upon the prisoners. They were recognised by the prosecutor at the time of the burglary, who immediately proclaimed their names, and charged them next day at the thannah. The property found in their houses, was also proved to be his.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND PULANOO DOSS,

versus

Rungpore.

KALEE DOSS.

1854.

March 10.

Case of
KALEE DOSS.Conviction
of the prisoner,
based upon his
confession be-
fore the magis-
trate, affirmed.

CRIME CHARGED.—1st count, dacoity attended with wounding in the house of Pulanoo Doss, the prosecutor, and plundering therefrom property value Rs. 121-5 ; 2nd count, accessory before and after the fact to the above dacoity.

CRIME ESTABLISHED.—Accessory before and after the fact to dacoity with wounding.

Committing Officer.—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. William Bell, sessions judge of Rungpore, on the 18th January, 1854.

Remarks by the sessions judge.—From the statement of the prosecutor and the evidence of the witnesses, (Nos. 1, 2, 3, 5, 14 and 15,) it is shewn that a dacoity was committed in the house of the prosecutor Pulanoo Doss, property valued at 121-5 taken off, and his son Gopee (No. 1,) slightly wounded, (Nos. 6 and 16,) but none of the dacoits were recognized. The prisoner, who is a relation of the prosecutor's wife, had been at the prosecutor's with another man the morning before the occurrence, and therefore was suspected and his house searched, but nothing was found. He however confessed before the darogah and magistrate, that he was cognizant of the intention of certain parties to commit the dacoity before, and of their having done so afterwards, and these confessions are established by the witnesses (Nos. 7, 8, 9, 10 and 11.)

Before the sessions court the prisoner pleaded *not guilty* and said he did not confess freely before the darogah, and that he was threatened if he did not do so before the magistrate. He is subject to attacks in the head. He brings three witnesses who say they know he was ill on the road, one day in Kartick, but seeing no reason to doubt his confessions, which are proved to have been free and unbiassed, I consider him *guilty* of the 2nd count and sentence accordingly.

I tried the case alone, under Act XXIV. of 1843.

Sentence passed by the lower court.—Five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The prisoner's confession before the magistrate, to the extent to which he acknowledged his guilt, amounting rather to privity than accessoryship, was full and circumstantial; I reject his appeal and confirm the sentence passed upon him.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT,

versus

SUMBOO CHUNDER KANDOO (No. 7, APPELLANT,) AND
SHEIKH BIRU (No. 8.)

Hooghly.

1854.

March 10.

Case of
SUMBOO
CHUNDER

KANDOO and
another.

CRIME CHARGED.—1st count, prisoners Nos. 7 and 8, with committing a dacoity attended with the murder of Ramruttun Chuckerbutty and plundering from his house property valued at Rs. 68-4, on the night of the 3rd September, 1853; 2nd count, prisoner No. 7, with privy to the above dacoity before the fact.

CRIME ESTABLISHED.—Being accomplices in a dacoity attended with murder and robbery.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 25th October, 1853.

Two prisoners convicted as accomplices in a dacoity attended with murder and robbery, and sentenced by the sessions judge to sixteen years' imprisonment. Appeal rejected.

Remarks by the officiating additional sessions judge.—The prisoners were committed with the prisoner Koilas Chung and convicted of being accomplices in the crime charged. In referring the case for the orders of the Nizamut Adawlut, soliciting confirmation of the proposed sentence of transportation for life, against the prisoner Koilas Chung, I have made a full and detailed report (see my letter* of reference No. 97, dated 25th October, 1853,) of the case, to which I beg to refer the Court for further particulars relative to the nature of the prisoners' complicity and the evidence on which they have been convicted.

* See case of Koilas Chung and others decided on the 24th Dec. 1853. Nizamut Reports.

Sentence passed by the lower court.—To be imprisoned with labor and irons for fourteen years in banishment and two years more in lieu of corporal punishment, in all sixteen (16) years each.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) The prisoner was on the spot named by the deceased, Ramruttun Chuckerbutty, when examined shortly after the occurrence. Ramruttun was then taken to the hospital, he named the prisoner and two others and again a second time, when the doctor reported his state and recommended that his deposition should be taken. The mofussil and foudjary confessions of the prisoner are duly verified. In these the prisoner admits he went with one Rajoo Sirdar, a chowkeedar, who said something was to be done, he found several persons seated in a garden near the house of Koilas Chung, acquitted; he was told to sit down, but was alarmed on finding that they were drinking

1854. and retreated to his own house. Presently he heard the noise of persons attacking the house of the deceased and began to call out.
- March 10. This is evidently a made-up defence, the prisoner does not disclose the whole of his participation in the dacoity and his self-serving pleas are of no avail, when considered with his immediate accusation by the deceased, who repeated the charge against him in his dying declaration. There is the strongest ground of presumption of the prisoner's guilt, I therefore uphold the sessions judge's sentence in appeal.
- Case of
SUMBOO
CHUNDER
KANDOO and
another.

PRESENT :

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND JOYNATH KUBERAJ,

versus

Rajshahye. GORAI ABDAL (No. 2,) TENGUR ABDAL (No. 3,) ANUND ABDAL (No. 8,) CHAMAROO ABDAL (No. 9.)

1854. CRIME CHARGED.—Nos. 2 and 3, 1st count dacoity in the house of Joynath Kuberaaj, prosecutor, in which property to the amount of Rs. 11-6 was plundered; 2nd count, receiving portions of the above-mentioned property, knowing at the time that such property had been obtained by dacoity; 1st count, Nos. 8 and 9 dacoity in the house of Joynath Kuberaaj, prosecutor, in which property to the amount of Rs. 11-6 was plundered.

March 10. Case of
GORAI ABDAL
and others.

Conviction of two prisoners for knowingly receiving property plundered in dacoity. CRIME ESTABLISHED.—Nos. 2 and 3, knowingly receiving property plundered in dacoity, Nos. 8 and 9, accomplices in dacoity.

Committing Officer.—Mr. F. Beaufort, joint-magistrate of Pubna.

and of two others as accomplices in dacoity upheld in appeal. Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 26th January, 1854.

Remarks by the sessions judge.—In the first instance, at the thannah, the prosecutor deposed this was only an *attempt* to commit a dacoity, that he lost no *property* and that neither he nor his household recognised *any one*. Subsequently his son gave in a list of the property plundered, valued at Rupees 11-4, and not only the prosecutor but two of his relations, residing with him, deposed to recognising several of the dacoits. Of course no reliance could be placed on their statements after the recorded information of the prosecutor at the thannah. Two neighbours (who were subsequently examined by the police) deposed in this Court, as well as the joint-magistrate's to recognising six persons,

and among these, Nos. 8 and 9, and a woman (witness No. 17,) who was living in a deserted house, deposed to No. 8, and others, coming and asking her if the owner (a widow with her daughter) was at home, and on her saying they were not, the dacoits went away. Another neighbour (witness No. 13,) deposed to seizing one of the dacoits after the dacoity, when No. 9, came and rescued him. Thus the statements of the witnesses, numbered 8 and 9 are in a manner confirmed. I have therefore convicted both these prisoners of being accomplices in the dacoity. In the house of the father-in-law of No. 2, was found a pair of ear-rings, which the prisoner claimed as his wife's; and in the house of No. 3, a *jarree* or brass water-pot, and a *lottah*, also claimed by the prisoner. The evidence for the prosecution fully proved that these articles were the prosecutor's, and for the defence that they were the prisoner's; but neither in the mofussil, nor in this court, could the prisoners establish how they obtained the things. I have therefore convicted them both of knowingly receiving plundered property, and sentenced the four as herein stated. The trial was held under Act XXIV. of 1843, and the Court's circular order of the 5th July, 1844.

Sentence passed by the lower court.—Prisoners Nos. 2 and 3, imprisonment each with labor and irons for three (3) years; prisoners Nos. 8 and 9, imprisonment each with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The evidence relied upon by the sessions judge seems to me sufficient for the conviction of these prisoners, I, therefore, confirm the sentence passed upon them.

1854.

March 10.

Case of
GORAI ABDAL
and others.

PRESENT :

H. T. RAIKES, Esq., *Judge*.

HAFIZ OOLLA MUNDUL AND GOVERNMENT,

versus

MONIM NUSHO (No. 1,) KURMUTHOOLLA (No. 2,) GENA NUSHO (No. 3, APPELLANT,) POOSOO NUSHO (No. 4,) JUNGLOO NUSHO (No. 5.)

Dinagepore.

1854.

March 10.

Case of
GENA NUSHO.

Two prisoners convicted of dacoity and two others of receiving the plundered property, sentenced to seven years' imprisonment by the sessions judge. Appeal rejected.

CRIME CHARGED.—1st count, dacoity; 2nd count, possession of plundered property obtained by dacoity, knowing it to be such.

CRIME ESTABLISHED.—Nos. 1 and 2 dacoity, and Nos. 3 to 5 possession of plundered property, obtained by dacoity, knowing it to be such.

Committing Officer.—Mr. E. S. Pearson, magistrate of Dinagepore.

Tried before Mr. James Grant, sessions judge of Dinagepore, on the 31st December, 1853.

Remarks by the sessions judge.—On the night of the 28th October, 1853, the house of the prosecutor was attacked by some seven dacoits, who plundered property valued at Rupees 40-15, beat the prosecutor and his son, and on going away set fire to the house, which was burnt to the ground.

Property valued at Rupees 13 was found on the prisoners, who all confessed in the mofussil and two of them before the magistrate. Two of the prisoners had formerly been in jail and their answers were very unsatisfactory, and the evidence of their witnesses was any thing but favorable to them.

Sentence passed by the lower court.—Imprisonment each, with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The witnesses deposed to the prisoner having confessed to the police and voluntarily given up property, which he had concealed in his house, and which the prisoner and the witnesses swore to. He now asserts in his appeal that he is the victim of a conspiracy, but there is nothing to support this defence.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

KESHRA NUSHO.

Rungpore.

CRIME CHARGED.—Having in his possession property acquired by dacoity committed in the house of the prosecutor, knowing it to have been so obtained.

1854.

March 10.

CRIME ESTABLISHED.—Having in his possession property acquired by dacoity, knowing it to have been so obtained.

Case of
KESHRA NUSHO.

Committing Officer.—Mr. R. H. Russell, joint-magistrate of Bograh.

Tried before Mr. William Bell, sessions judge of Rungpore, on the 5th January, 1854.

The proof
against the
prisoner was
held to be in-
sufficient for
his conviction.

Remarks by the sessions judge.—This was a simple case of dacoity, occurring in thannah Gobindgunge zillah Bograh, on the 26th of November. From the deposition of the prosecutor and evidence of the witnesses, it is shown that a dacoity was committed, and property to the amount of Rs. 28-12 carried off from the house of the prosecutor. He suspected the prisoner, and on the darogah's searching his house a *lotah* and *dhootee* were found, which were identified as prosecutor's. The chowkeedar also testified to his being absent from his house on the night of the dacoity, the prisoner denied and declared the property to be his own, but his witnesses all declare they know nothing of him or the property. I tried the case alone under Act XXIV. of 1843, and convicted him.

Sentence passed by the lower court.—To be imprisoned with labor and irons for the term of seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The only proof against the prisoner is that a *lotah* and *dhootee*, (which are articles not of easy recognition) claimed by the prosecutor, were found in his house. There seems to have been no attempt to conceal them. The evidence is in my opinion insufficient for conviction. I acquit and direct his release.

PRESENT :

SIR ROBERT BARLOW, BART., *Judge.*

GOVERNMENT,

versus

KERAMOODDEEN SHIKARREE (No. 10,) DURBAREE SHIKARREE (No. 11,) RUFFEE SHIKARREE (No. 12,) KALOO SHIKARREE (No. 13,) KIAMUDDEEN SHIKARREE (No. 14,) DOWLUT SHIKARREE (No. 15,) SHEIKH KHODABUXH MOSULMAN (No. 16,) BOODHYE SHIKARREE (No. 17,) ROHIM MONDUL (No. 4,) ARIZOOLLA ALIAS KALIA ARIZOOLLA (No. 5,) DIPCHAND PODE (No. 6,) HARAN PODE (No. 7.)

Hooghly.

1854.

March 10.

Case of
KERAMOOD-
DEENSHIKAR-
REE & others.

CRIME CHARGED.—1st count, prisoners, Nos. 11 to 17, and 4 to 7, dacoity in the house of Kazi Mojibuddin at Bansdoho on the night of the 16th December, 1849, in which property to the amount of Rs. 4,141-12 was plundered; 2nd count, prisoners, Nos. 10 to 17, and 4 to 7, belonging to a gang of dacoits; 3rd count, prisoner, No. 10, being a sirdar of a gang.

Committing Officer.—Mr. E. Jackson, commissioner for the

Ten prisoners, suppression of dacoity at Hooghly.

convicted of
dacoity and of
having belong-
ed to a gang of
dacoits, sen-
tenced to
transportation
for life. Two
prisoners con-
victed only of
dacoity sen-
tenced to six-
teen years' im-
prisonment.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 6th February, 1854.

Remarks by the officiating additional sessions judge.—The prisoners are charged with having committed a dacoity, in the house of one Mojibuddin Kazi, on the night of the 16th December, 1849, and plundered therefrom property to the amount of Rs. 4,141-12, and with having belonged to a gang of dacoits, the prisoner Keramuddeen Shikarree, No. 10, being one of the leaders of the gang. The commitment was made by the commissioner for the suppression of dacoity, under the provisions of Act XXIV. of 1843.

* Witnesses Nos. 1; 2, 3.

The witnesses, indicated in the margin,* are approvers on the establishment of the commissioner, and prove the charge against the prisoners in all its counts, save the exceptions hereinafter noticed. Their evidence goes to show that the dacoity charged was planned by the prisoner Kiamuddeen and his brothers, and that the gang travelled a distance of about twenty miles during the day to perpetrate it. They appear to have made one short halt only on the road to take some refreshment, and reached their destination while it was yet light. The attack was made about midnight and on breaking into the lower part of the dwelling, the gang found a man and woman in one of the rooms, the latter of whom after some rough usage was induced to tell them

that the cash and valuables were kept upstairs in an iron chest and pointed out a flap door, through which the apartment was to be approached. Finding it strongly secured by bolts, the robbers were obliged to break through it. The iron chest also, for a long time resisted their attempts to force and it was only by dint of hammering that a small fissure was made in the lid, through which the hand was introduced with difficulty, and cash abstracted in small quantities and with much trouble and delay. The testimony of the witnesses noticed, also proves that all prisoners, with exception of Kiamuddeen Shikaree, No. 14, and Budhie Shikaree No. 17, of calendar No. 6, have taken part in other dacoities with organized gangs, under constituted leaders.

The parties robbed, prove the occurrence of the dacoity charged. Their names are mentioned in the two calendars of commitment, but as they are differently numbered in each, I cannot well numerically indicate them in the margin, as required by the Court's circular letter No. 9, of the 31st August, 1853.

The prisoners, Ruhim Khan, No. 4, and Arizoolla Shaikh, *alias* Kalia Arizoolla, No. 5, of calendar, No. 4, admitted crime before the commissioner for the suppression of dacoity, and the record of

* Witnesses, Nos. 6, 7, their confessions is verified by the witnesses enumerated in the margin.*

The said prisoner, Arizoolla, pleads guilty before this court, and makes no defence. The rest of the prisoners deny charge and accuse the approvers of implicating them from malicious motives, for which they assign frivolous causes. Most of the prisoners cite witnesses to good character, and out of twenty-two persons examined severally on their behalf some prove the plea.

The records furnished by the several magistrates, in whose jurisdiction the dacoities detailed by the approvers occurred, prove alike the truth of their confessions before the commissioner for the suppression of dacoity, and the value of their evidence before this Court.

I convict all the prisoners, with the exception of prisoners, Kiamuddeen Shikaree, No. 14, and Budhie Shikaree, No. 17, of both counts of the charge, on the approvers' evidence offered on the trial; the prisoners, Ruhim Mondul, No. 4, and Arizoolla Shaikh *alias* Kalia Arizoolla, No. 5, on their own confessions, in addition to that testimony and recommend that they be sentenced to transportation for life. I also convict the prisoners, Kiamuddeen Shikaree and Budhie Shikaree, of the dacoity charged on the same evidence, and sentence them to sixteen years' imprisonment (two years' in lieu of corporal punishment) with labor in irons in banishment, but suspend the execution of such sentence until the receipt of the Court's final orders on this reference.

Remarks by the Nizamut Adawlut.—(Present: Sir Robert Barlow, Bart.) The prisoners are charged with dacoity in the house of Kazi Mojibuddin, at the village of Bansdoho in

1854.

March 10.

Case of
KERAMOOD-
DEENSHIKAR-
REE & others.

1854. Baraset, and also with having belonged to a gang of dacoits.

March 10.

Case of

KERAMOOD-
DEENSHIKAR-
REE & others.

They have all been recognized by the approvers, and sworn to as parties concerned in the said dacoity before the commissioner for suppression of dacoity.

The prisoners 4 and 5 confessed before the commissioner, and 5 also before the sessions judge.

In the detailed statement taken from the approvers, before they were admitted to give evidence, all the prisoners, save Nos. 14 and 17, were named as professional dacoits; and the village in which the several dacoities, twenty or more, took place, were also pointed out, proof of the occurrence in most instances was given.

The sessions judge's report gives full particulars of the dacoity at Bansdoho, the other details are recorded in the papers forwarded from the commissioner's office on the commitment of the prisoners. I concur in the conviction of the several prisoners, included in the two calendars now before the Court, and confirm the sentence proposed to be passed by the sessions judge.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND ASUCK MAHOMED,

Rungpore.

versus

1854.

March 11.

Case of

Roop Doss &
others.

ROOP DOSS (No. 19,) RADHAKANT (No. 20,) TAKOOR DOSS (No. 21,) MANUHUREE (No. 22,) BRIJO BEARER (No. 23,) DHOOOL CHAND (No. 24,) BEENUD DOSS (No. 25,) AND GUNGA HAREE (No. 26.)

Seven prisoners convicted of dacoity solely on their own confessions acquitted in appeal. The sentence confirmed against one prisoner in whose possession some of the stolen property was found.

CRIME CHARGED.—1st count, with committing dacoity in the house of the prosecutor Asuck Mahomed and plundering therefrom cash and property value Rs. 278; prisoner No. 26, 2nd count, with taking and having in possession property acquired by the above dacoity, knowing it to have been so acquired.

CRIME ESTABLISHED.—Nos. 19 to 25, dacoity in the house of the prosecutor Asuck Mahomed and plundering therefrom cash and property value Rs. 278; prisoner No. 26, taking and having in possession property acquired by the dacoity, knowing it to have been so acquired.

Committing Officer.—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, sessions judge of Rungpore, on the 2nd January, 1854.

Remarks by the sessions judge.—This was a simple case of dacoity occurring in the jurisdiction of thannah Foorunbaree, on

the 5th of October, 1853. The prosecutor's house was attacked and *looted*, and property to the amount of 278 rupees carried off, but neither he nor the neighbours were able to recognize any of the dacoits, of whom there were some forty men the prosecutor says. In consequence of suspicions resting upon the prisoners, they were arrested and Nos. 19, 20, 21, 22, 23, 24 and 25, confessed before the darogah and again before the magistrate, with the exception of Nos. 19 and 22, three pieces of property (a silver *hunslee*, four gold rings and a lock) were found in the house of No. 26, (a *badmash*) who declared Poosoonath had given him the two ornaments and that the lock was his.

Before the sessions court, the neighbours prove several of the prisoners to have been absent from their homes, under pretext of going to the *haut*, and their confessions are established by the witnesses who declare them to have been free and voluntary, they all deny and declare they were ill used, but only bring witnesses to their previous good characters; seeing no reason to doubt the confessions made, I hold Nos. 19, 20, 21, 22, 23, 24 and 25 guilty on the 1st count. Gunga Haree pleads not guilty and says the property was not found in his house, a fact established by witnesses (Nos. 28, 29, 30, 31 and 32); he brings three witnesses to prove his respectability, they are all his relations and the witnesses (Nos. 31, 32, 46 and 47,) for the prosecution prove him a suspicious character, I therefore convict him on the second count. I tried the case alone under Act XXIV. of 1843.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for ten (10) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The only proof against the prisoners Nos. 19 to 25, is their own confessions. Nothing else either direct or circumstantial appears against them.

Although only two of these prisoners repudiated their thannah confessions, when brought before the magistrate, they all pleaded "*not guilty*" before the sessions, and alleged that the fear of ill-treatment, to themselves and families, had alone induced them to plead "*guilty*."

Confessions so entirely unsupported are not, in my opinion, safe grounds of conviction. Had these confessions been genuine, it is but natural to suppose that some portion of the property stolen (valued at 278 rupees) would have been traced through the instrumentality of the confessing prisoners. Such is not the case, and I do not find a single circumstance to support their statements, I therefore acquit the prisoners Nos. 19 to 25.

It is established against prisoner No. 26, that some articles of property were concealed by his mother, for the possession of which he fails to account, the conviction therefore may stand against this prisoner, and I confirm the sentence passed upon him.

1854.

March 11.
Case of
Roop Doss &
others.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND TOONKOO NOSYA,

*versus*SUFER MAHOMED (No. 2.) NUSER MAHOMED (No. 3.)
AND MUNTOOMEER SEKAREE (No. 4.)

Rungpore.

1854.

March 11.

Case of
SUFUR MA-
HOMED and
others.Three prison-
ers convicted
of dacoity by
the sessions
judge, and sen-
tenced to ten
years' impris-
onment. In
appeal the
conviction al-
tered but sen-
tence upheld.

CRIME CHARGED.—1st count, dacoity in the house of Khootoo, master of Toonkoo the prosecutor, and plundering property to the value of rupees 113-6-6 ; 2nd count, having in possession property acquired by the crime.

CRIME ESTABLISHED.—Dacoity and plundering property, value rupees 113-6-6.

Committing Officer.—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, sessions judge of Rungpore, on the 17th January, 1854.

Remarks by the sessions judge.—This is a simple case of dacoity occurring in Chuck Noondee thannah Bagdowar. From the deposition of the prosecutor and evidence of the witnesses Nos. 6, 7, 8, 9, 17 and 18, it is shown that on the night of Sunday, October 30th, the house of Toonkoo Nosya was broken into and property to the value of rupees 113-6-6 taken off. Early on Thursday morning witness, No. 1, saw some men, when he went out of his house at Pelasbaree at dawn, coming across the fields with a bag and considering it a suspicious circumstance, told the chowkeedar, who stopped them and found the bag contained silver ornaments, copper plates, &c., he therefore conveyed the three men to the thannah Govindgunge in the Bograh district, where they confessed, and their confessions were duly proved by witnesses, Nos. 3, 4 and 5, in the sessions court. The property, valued about twelve or thirteen rupees, was duly sworn to as prosecutor's by witnesses, Nos. 7, 8, 9, 17 and 18.

The prisoners before the magistrate pleaded not guilty, and said there was an intrigue with witness's (No. 1.) mistress.

Before the sessions court, No. 2, Sufer Mahomed pleads not guilty and states that he never confessed before the darogah, and that he has an intrigue with the mistress of witness No. 1 ; he produces eight witnesses, but they merely state that they saw the three prisoners at a *ghat* in Kartick on a Tuesday.No. 3, Nasir Mahomed pleads not guilty and cites four of the same witnesses, and No. 4, Muntoomeer pleads an *alibi* which he fails to establish by his witnesses.

I consider the case fully made out and sentence accordingly. I tried the case alone under Act XXIV. of 1843.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for ten (10) years. 1854.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoners were apprehended on suspicion and the property found in their possession, as stated by the sessions judge, was recognized and sworn to by the prosecutor and his witnesses. March 11.
Case of
SUFUR MA-
HOMED and
others.

The defence set up is, that the prisoners while going to a neighbouring market, saw a man pursued by others, who flung away a bundle he carried, crossed a river and got into some jungle, the parties in pursuit then accused the three prisoners of having stolen the property which the bundle contained and took them off to the thannah. This account is more or less varied each time the prisoners have occasion to repeat it, showing its falsehood and tending greatly to establish the truth of the other side's statement. The sessions judge has convicted the prisoners of the dacoity charged and sentenced them to ten years' imprisonment each. The conviction should rather have been on the 2nd count, namely, having in possession property acquired by the dacoity, and on this part of the charge, I convict them and uphold the sentence passed upon them.

PRESENT;

SIR R. BARLOW, BART., *Judge.*

Hooghly.

GOVERNMENT,

1854.

versus

HANEEF SHIKAREE (No. 20,) CHAND SHIKAREE (No. 21,) NAZIR SHIKAREE (No. 22,) BURKUT-OOLLAH ALIAS WOOJUT (No. 23,) GOUR SHIKAREE ALIAS GURIBOOLLAH SHIKAREE (No. 24,) NOOR MOHAMED SHIKAREE (No. 25,) DWARKA BAG-DEE (No. 26.)

March 11.
Case of
HANEEF SHI-
KAREE and
others.

CRIME CHARGED.—1st count, dacoity in the house of Shib Chunder Dey Telec at Natapool on the night of the 5th January, 1851; 2nd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly on the 1st February, 1854.

Remarks by the sessions judge.—The prisoners are charged on two counts, the first with having committed a dacoity on the night of the 5th January, 1851, at Natapool, and the second with having belonged to a gang of dacoits, and these facts are esta-

Five prisoners convicted of dacoity and of having belonged to a gang of dacoits, sentenced to transportation for life. Two prisoners convicted only of the dacoity, sentenced to sixteen years' imprisonment in banishment.

1854. blished against them by the evidence of the two approvers,*
 March 11. * Witnesses Nos. 1, 2. with exceptions as regards the latter, i. e. the prisoners, Burkutoollah alias Woojut Shikaree (No. 23,) and Gour alias Guriboollah Shikaree (No. 24).
 Case of HANEEF SHIKAREE and others. There is nothing remarkable in the features of the dacoity charged, which makes it necessary that the particulars should be detailed. Gour Shikaree, a renowned dacoit sirdar was the leader on the occasion.

† Witnesses Nos. 2, 4, 5, 6. The witnesses, noted in the margin,† prove the occurrence of the dacoity in question, among whom is the person whose house was attacked and plundered.

Evidence of the occurrence of the dacoities detailed by the approvers in their confession, before the commissioner for the suppression of dacoity, and examination before the court, will be found among the papers supplied by the magistrate in whose jurisdiction the affairs occurred. This circumstance goes far to prove the genuineness of those confessions, and the court has the assurance of the commissioner that every possible precaution was taken to prevent collusion between the examined parties. The evidence therefore of the approvers may fairly be considered conclusive against the prisoners.

The defence of all the prisoners is, that they have been falsely and wrongfully accused by the approvers from malicious motives, for which they assign frivolous grounds. All, with the exception of the prisoner, Dwarka Bagdee, (No. 26,) call witnesses to good character and the persons examined on their behalf in a measure prove the plea.

I convict all the prisoners, except prisoners, Nos. 23 and 24, of both counts of the charge, on the approvers' evidence adduced on the trial, and propose that they be transported for life. The reserved prisoners, Burkutoollah alias Woojut Shikaree, and Gour alias Guriboollah Shikaree I convict of the dacoity charged, and sentence to sixteen years' imprisonment with labor in irons in banishment (two years in lieu of corporal punishment) holding the execution of such sentence in abeyance until the receipt of the Court's final orders on this reference.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) The prisoners were convicted on the evidence of the approvers, whose statements before the commissioner for suppression of dacoity establish their participation in the affair at Natapool; several of the prisoners are also implicated by the approvers in the various dacoities alluded to in their depositions. The sessions judge has convicted all, but prisoners Nos. 23 and 24, on both counts of the calendar; the latter on the 1st count only.

The Court confirm the sentences proposed by the sessions judge, whose remarks, on the defence set up by the prisoners, are fully borne out by the record.

PRESENT :
A. DICK, Esq., *Judge.*

GOVERNMENT AND SUNNOO,

versus

JUTADHAREE ALIAS JUTTOOLAL.

Purneah.

1854.

March 13.

Case of
JUTADHAREE
alias JUTTOO-
LAL.

CRIME CHARGED.—1st count, arson, or wilfully and maliciously setting fire to the prosecutor's house ; 2nd count, being an accomplice in the above count, and 3rd count, aiding and abetting in the above.

CRIME ESTABLISHED.—Arson.

Committing Officer.—Mr. G. A. Pepper, officiating magistrate of Purneah.

Tried before Mr. G. Loch, officiating sessions judge of zillah Purneah, on the 1st December, 1853.

Remarks by the sessions judge.—On 23rd August, 1853, (8th Bhadur 1260,) the prisoner sent two peadahs to the prosecutor's house, requiring his attendance at the prisoner's "*kamut*" a short distance off. The prosecutor concealed himself, and though repeatedly called to, would not leave his house. The peadahs then called to the prisoner saying, that their endeavours to get the prosecutor out were unavailing. The prisoner answered, if he does not come out I will put a light to his thatch, and running from his *kamut* with a coal he lit some of the thatch, applied it to the end of the house and then with the peadahs ran off. He was followed by the prosecutor and several others, who tried to stop him, but he escaped and the prosecutor then went to the thannah and gave his deposition. The prisoner pleaded not guilty. He stated that he held part of the village on a *pottah* from Mr. Forbes ; that the *ryuts* were most troublesome, destroying his crops, and allowing their cattle to trespass over his lands ; that he had frequently complained to the zemindar, and on the present occasion, a peadah had been sent to the village to lay hold of the offenders and to take them to the zemindary cutcher-ry ; that he agreed to settle the case and on the day in question was sitting in his *kamut* waiting for the villagers, when they rushed out armed with sticks, and he then ran away towards the thannah which was about half a mile off and on nearing it observed the house in flames. He denied also sending for the prosecutor that day. The charge was fully proven against him by the evidence for the prosecution, and their evidence corroborated in a manner by the evidence for the defence. His witnesses saw him pursued by the villagers, and two of them acknowledge that he did send two peadahs to fetch the prosecutor from his house which is denied by the prisoner ; and another,

Prisoner con-
victed of arson
by the sessions
judge, acquit-
ted in appeal.

1854.

March 13.

Case of
JUTADHARRE
alias JUTTOO-
LAL.

after seeing him run away, went to the village where the prosecutor's house was still burning and ascertained at the time, that the prisoner had fired the house. It appears to me that the prisoner, irritated at the prosecutor's refusing to leave the house, without thought of the consequence, put his threat of firing the house into execution, and on the cry of fire was pursued by the villagers. It was this pursuit which the witnesses for the defence saw, and which the prisoner and some of his witnesses declared to have been an attack on his *kamut*. The law officer convicted the party of the charge of arson in which I concur.

Sentence passed by the lower court.—Imprisonment for two (2) years without labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) There is much on the record to shew, that quarrels and disputes existed between the prisoner and the prosecutor and his eye-witnesses, about cultivation and trespass of cattle. The evidence and the charge are therefore liable to great suspicion. It is too, scarcely credible that prisoner should in midday, surrounded by his enemies looking on himself, set fire to the prosecutor's house, though he had two peadahs with him, whom he might have ordered to do so. The statement of the prosecutor however on the cross-examination of him by the *mooftee*, renders his charge utterly incredible. He admits that the house or apartment fired, was the one in which he was concealed, and that it had no *jhamp*. The peadahs therefore could have entered, searched for and seized him; yet this natural course they did not pursue. They beat the walls, pulled off the thatch, and then prisoner fired the house; because prosecutor would not come out. The Court, not satisfied with the evidence against the prisoner, acquit him and order his release.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge*.

Sarun.

1854.

GOVERNMENT,

versus

RUGHOONATH QUIRY.

March 13.

Case of
RUGHOONATH
QUIRY.

The prisoner was acquitted of perjury, as his deposition had not been signed according to law.

CRIME CHARGED.—Perjury in having on the 26th September, 1853, corresponding with 9th Assin, 1261, F. S. intentionally and deliberately deposed under the solemn declaration of Act V. of 1840, taken instead of an oath before the deputy magistrate of Sewan, that he recognized the thieves Seeta, Dokee, Bhola and Mundata and saw them assaulting Thakary Quiry deceased, and in having on the same date and before the same court, again intentionally and deliberately deposed under the solemn declara-

tion of Act V. of 1840, that he heard it from Sookary and Thakary and did not see the assault; such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. J. F. Lynch, deputy magistrate of Sewan, with powers of magistrate.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 28th November, 1853.

Remarks by the sessions judge.—The facts of this case are pretty fully detailed in the charge made against the prisoner, and I have only further to observe that it is clearly shown, that he deliberately gave false evidence against the parties on trial, knowing fully that what he was stating (as far as his own knowledge went) was untrue. In fact he admits the crime, but pleads in extenuation that he was instigated to it by the ticeadar and darogah, and that others having said that they had seen the beating, he said the same, but this is of course a totally unsatisfactory plea, and as the moulvee also convicts him of the charge made, I have in concurrence with the '*futwa*' convicted and sentenced him as noted in the preceding column.

Sentence passed by the lower court.—To be imprisoned with labor and irons for a period of (4) four years from 28th November, 1853.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The first deposition of the prisoner in this case was recorded on the 21st September. It is unsigned by any authority or by the prisoner. His evidence was then continued on the 26th September, and the charge of perjury is based upon the contradictions occurring in it on that day, but I cannot find that the prisoner affixed his name or mark to the deposition of that date, as directed by Clause 2, Section 7, Regulation IV. 1797. It was not therefore legally recorded.

I acquit him and direct his release.

1854.

March 13.

Case of
RUGHOONATH
QUIRY.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND GOONAH AHEER,

*versus*Sarun. BEHARY (No. 1,) MOHIT (No. 2,) PURIAG (No. 3,) AND
TOOLSEE (No. 4.)1854. CRIME CHARGED.—No. 1, culpable homicide of Juggunnath
Ahir (deceased.) ; Nos. 2 to 4, aiding and abetting the same.March 15. CRIME ESTABLISHED.—No. 1, culpable homicide of Juggun-
nath Ahir (deceased.) ; Nos. 2 to 4, aiding and abetting the
Case of BEHARY and same.
others.Committing Officer.—Mr. J. F. Lynch, deputy magistrate of
Sewan.The prisoners were convicted of culpable homicide and of aiding and abetting in it. Tried before Mr. C. Garstin, sessions judge of Sarun, on the
5th November, 1853.*Remarks by the sessions judge.*—The homicide charged in this case took place under the following circumstances. It appears that a boy (the son of the prosecutor) was leading some cattle, which he allowed to get into Mohit's field, whereupon Mohit slapped him twice, and sent him home crying. Upon this, his uncle, Juggunnath (deceased) came to remonstrate with Mohit for having beaten the boy, when he and the other prisoners, who were there, all, set upon him, and one of them (Behary) struck him two blows, which killed him. The other three prisoners do not appear to have actually struck the man, but they are shown to have instigated and aided in the assault. All the prisoners plead *not guilty*, and say that the boy turned the cattle into their field and when he got a slight beating for this, he went off crying, and in the end the deceased and others of his friends came and beat them, and that the deceased came by his death from a blow inflicted by one of his own party. The jury convict all the prisoners, and as there is not, in my opinion, the smallest doubt of their guilt, they have all been convicted and punished as noted in the proper column.*Sentence passed by the lower court.*—No. 1, to be imprisoned for a period of (4) four years, without labor and irons, from the 5th November, 1853, and to pay a fine of (40) forty rupees within one month from the above date, or in default of payment to labor until the fine be paid or the term of his sentence expire ; No. 2, to be imprisoned for a period of (3) three years, and to pay fine of (30) thirty rupees, or in default of payment to labor until the fine be paid or the term of sentence expire, and Nos. 3 and 4 each to be imprisoned for a period of (2) two years, and each to pay a fine of (20) twenty rupees, or in default of

payment to labor until the fine be paid or the term of sentence expire.

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Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) There is no reason for interference with the conviction and sentence in this case. It is proved that the deceased met with a violent death, and that he was struck by Behary, while the others were present inciting him to the attack. I reject the appeal.

March 15.
Case of
BEHARY and
others.

PRESENT :

H. T. RAIKES, Esq., *Judge*.

TRIAL No. 2.

GOVERNMENT ON THE PROSECUTION OF LAL KHAN,

versus

MOHUNNATH (No. 1,) SHEIKH BELDOOR (No. 2 APPELLANT) AND SHEIKH SUFDUR (No. 3, APPELLANT) AND ANOTHER.

Sylhet.

CRIME CHARGED.—1st count, prisoners, Nos. 1, 2 and 3, burglary and having stolen property to the value of Co.'s Rs. 301-4; 2nd count, prisoners, Nos. 1, 2 and 4, knowingly having in possession the property obtained by the above burglary, and 3rd count, all the prisoners, with privity to the crimes charged in the 1st and 2nd counts.

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March 17.
Case of
SHEIKH BEL-
DOOR and
SHEIKH SUF-
DUR.

CRIME ESTABLISHED.—Prisoner, No. 1, knowingly being in possession of property stolen by burglary and theft, prisoner No. 2, privity and being an accessory after the fact of burglary and theft and prisoner No. 3, privity and knowingly having in possession the property stolen by burglary.

The appeal of
two prisoners
convicted of
several charges
of burglary &
receiving stolen
property,
was rejected.

TRIAL No. 3.

GOVERNMENT ON THE PROSECUTION OF THOMSON CHRISTIAN,

versus

MOHUNNATH (No. 5,) SHEIKH BELDOOR (No. 6 APPELLANT) AND URJOONNATH (No. 7.)

CRIME CHARGED.—1st count, prisoners, Nos. 5, 6 and 7, burglary and having stolen property to the value of Co.'s Rs. 7-2-6; 2nd count, all the prisoners, knowingly having in possession the stolen property obtained by the above burglary, and 3rd count, all the prisoners, privity to crimes charged in the 1st and 2nd counts.

CRIME ESTABLISHED.—Prisoners, Nos. 5 and 6, as in preceding case, and prisoner No. 7, privity to burglary and concealment of property stolen by burglary.

1854.

TRIAL No. 4.

March 17.
Case of
SHEIKH BEL-
DOOR and
SHEIKH SUF-
DUR.

GOVERNMENT ON THE PROSECUTION OF BOODOORAM
SYCE,
versus

SHEIKH BELDOOR (No. 9 APPELLANT.)

CRIME CHARGED.—1st count, burglary in informant's house with intent to commit a theft, and 2nd count, privity to the above.

CRIME ESTABLISHED.—Privity and being an accessory after the fact of burglary and theft.

TRIAL No. 5.

GOVERNMENT ON THE PROSECUTION OF GOOROOCHURN
GHOSE, CHRISTIAN,
versus

SHEIKH BELDOOR (No. 11 APPELLANT.)

CRIME CHARGED.—1st count, prisoners, Nos. 10 and 11, theft of property to the value of Co.'s Rs. 9-8, by opening the door; 2nd count, all the prisoners with knowingly having in their possession the property obtained by the above theft, and 3rd count, all the prisoners with privity to the above two counts.

CRIME ESTABLISHED.—Prisoner, No. 11, privity and being an accessory after the fact of burglary and theft.

TRIAL No. 6.

GOVERNMENT ON THE PROSECUTION OF GOOROOCHURN
CHRISTIAN AND OOKCHAND CASSIAH,
versus

SHEIKH BELDOOR (No. 14 APPELLANT,) URJOONNATH
(No. 16,) AND OTHERS.

CRIME CHARGED.—1st count, Nos. 13, 14, 15 and 16, theft of property to the value of Co.'s Rs. 13, by opening the door; 2nd count, knowingly having in their possession the property obtained by the above theft, and 3rd count, privity to the above two counts.

CRIME ESTABLISHED.—Prisoner, No. 14, privity and being an accessory after the fact of burglary and theft.

TRIAL No. 7.

GOVERNMENT ON THE PROSECUTION OF SHEIKH AHMID
ALLEE,
versus

SHEIKH BELDOOR (No. 19 APPELLANT,) URJOONNATH
(No. 20,) AND ANOTHER.

CRIME CHARGED.—Nos. 18, 19 and 20, 1st count, theft of property to the value of Co.'s Rs. 11-13, by opening the door; 2nd count, knowingly having in their possession the stolen property, and 3rd count, privity to the above two counts.

CRIME ESTABLISHED.—Prisoner, No. 19, privity and being an accessory after the fact of burglary and theft.

TRIAL No 8.

GOVERNMENT ON THE PROSECUTION OF SHEIKH
MUNGOO,

versus

MOHUNNATH (No. 22,) SHEIKH BELDOOR (No. 23,
APPELLANT) URJOONNATH (No. 25,) AND ANOTHER.

CRIME CHARGED.—Nos. 22, 23, 24 and 25, 1st count, theft of property to the value of Co.'s Rs. 30, by opening the door; 2nd count, knowingly having in their possession the property obtained by the above theft, and 3rd count, privity to the above two counts.

CRIME ESTABLISHED.—Prisoner, No. 23, privity and being an accessory after the fact of burglary and theft.

TRIAL No. 9.

GOVERNMENT ON THE PROSECUTION OF MAHOMED
BUKHT,

versus

SHEIKH SUFDUR (No. 29, APPELLANT) AND OTHERS.

CRIME CHARGED.—1st count, theft of property to the value of Co.'s Rs. 2-5; 2nd count, knowingly having in their possession the property obtained by the above theft, and 3rd count, privity to the above two counts.

CRIME ESTABLISHED.—Prisoners, Nos. 27, 28 and 29, privity and knowingly having in possession the property stolen by burglary.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 18th November, 1853.

Remarks by the sessions judge.—In trial No. 2.—This and the following eight cases are all more or less connected with one another, and I shall, therefore, give a concise history of the cases in general, and then confine myself to the evidence in each.

In the month of August last, a burglary and theft of property to the value of about 300 rupees, took place in the house of prosecutor, but having no suspicions of any one he simply deposed the circumstance at the thannah. In September, however, one Gulie Dulal offered him (the prosecutor) some cloths for sale, which he at once recognized as part of the property stolen from his house. He sent, therefore, for the police, and the Dulal stated that they had been sold to him by one Jaloomeeah in the presence of witnesses. This fact being established Jaloomeeah was apprehended and declared that he had purchased them in the presence of witnesses from the prisoner Mohunnath (prisoner No. 1) a syce in the service of the Rev. Mr. Pryse; Mohunnath was apprehended, but denied all knowledge of the matter. His house, however, was searched and property was pointed out by his con-

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Case of
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nexions as having been concealed by him; other parties were apprehended who made various statements shewing their participation in the robbery, and the eight other cases referred to at the beginning of this abstract were brought to light.

In the present case the sale by the prisoner Mohunnath of the stolen cloths to Joloomeah is satisfactorily established, and Mohunnath has no evidence to rebut the charge. He merely put in a long petition charging the darogah with corrupt practices and with ill feeling to himself, but he named no witnesses before the magistrate. Sheikh Beldoor (prisoner No. 2,) made a confession before the darogah and the magistrate to the effect that he lived in Mr. Pryse's stable, and that the prisoners Nos. 1 and 3, committed the various robberies alluded to above, and brought and concealed the stolen articles in straw in the stable; that they afterwards took away the property and now charged him with participation in the theft, because he declined to receive any of the stolen goods.

Sheikh Sufdur stated before the darogah that he had not committed the thefts, and he afterwards before the magistrate, stated that Mohunnath had given him a *hookah* as part payment of a debt. This *hookah* was proved to be stolen, and will hereafter be referred to in case 8.

Mussummut Gunga, prisoner No. 4, stated that she had seen Beldoor (prisoner No. 2,) and others throw various articles into her husband's tank, but she denied all knowledge of the theft.

The assessors convict all the prisoners of privity to burglary and of having stolen property in their possession, knowing it to have been stolen, but from this verdict I dissent. I consider that the prisoner No. 1, should be convicted of being in possession of property acquired by burglary, knowing it to have been so acquired. The prisoner No. 2, I convict on his own confessions, which are proved to have been voluntarily made, of privity and being an accessary after the fact, because he helped the prisoners Nos. 1 and 3, to conceal their booty. Sheikh Sufdur I convict in this case of privity only, while Gunga I acquit. A *tusla*, part of the property, was found in the tank pointed out by her, but she denies that she knew that it was stolen. There is no other evidence against her.

In trial, No. 3.—The house of Lall Khan was burglariously entered in June last, and property stolen, but no suspicions attached to any parties. On searching Mohunnath's house, property was pointed out by the prisoner Urjoonnath (prisoner, No. 7,) as having been concealed by Mohunnath (prisoner, No. 5,) and as articles belonging to Lall Khan were found, the prisoner Mohunnath stated that he could not account for the presence of two *kumberbands* in the bundle pointed out, but that a *saree* therein was his own property. This, however, was

proved to be the property of prosecutor, and the prisoner could not say from whom he had purchased it.

Sheikh Beldoor confesses to privy and being an accessary as stated in case No. 1.

The assessors find Mohunnath guilty of burglary and theft, Beldoor of privy and being an accessary after the fact, and acquit Urjoonnath and Gunga, but although I concur in their verdict in regard to Beldoor and Gunga, I dissent from them in regard to Mohunnath and Urjoonnath. There is no evidence to shew that Mohunnath committed the burglary, but he is proved to be in possession of the stolen property. Urjoonnath is his brother-in-law, and pointed out the bundle which he says Mohunnath concealed the previous evening, and assigns no reason for the concealment, so that it must be presumed that he knew it was stolen.

In trial No. 4.—In the month of August, a burglary was effected in the prosecutor's house, but no property was stolen. The prisoner confessed that he was aware that Mohunnath and others had committed the burglary with intent to steal, and I concur, therefore, in the assessors' verdict in convicting him of privy.

In trial No. 5.—The prosecutor deposes that in May last, the string of the stable door was cut, and that the cooking pots found in Mohunnath's tank are his.

The assessors convict Mohunnath and Beldoor of being in possession of the stolen property, and Gunga of privy to the theft, but I cannot concur in this verdict. Beldoor's confession is as in cases, Nos. 1 and 2, to privy and being an accessary after the fact, while the evidence is, in my opinion, insufficient to convict the other prisoners. Gunga pointed out the property in the tank, but said Beldoor and others had thrown it in, and that she did not know it was stolen. The tank it is true is close to Mohunnath's house, but it is uninclosed and might easily have been put there by other persons. I accordingly acquit Mohunnath and Gunga.

In trial No. 6.—The prosecutor deposes to his house having been entered in June last, by the cutting the string of the door when property was stolen. A brass "*thal*" and "*tusla*" were found in the presence of Kaleenath, which were pointed out by Musst. Moho. Kaleenath stated that he had purchased them from Mohunnath, but the witnesses did not prove this fact. Bishonath a witness for the prosecutor, however, deposed to his having shewn him the property and to have stated that he had purchased it from Mohunnath. The assessors convict Beldoor, Kaleenath and Musst. Moho, of privy and of being in possession of stolen property and acquit Mohunnath; but from this verdict I in part dissent. I convict Beldoor as in other cases, of being an accessary after the fact and of privy, but I cannot

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Case of
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DUR.

convict Kaleenath and Musst. Moho. It is true that they have not proved that the property in their possession was purchased from Mohunnath, but one witness deposes to its having been shewn to him previous to the charge of theft, and I therefore acquit them. I concur with the assessors in the acquittal of Mohunnath.

In trial No. 7.—The house of the prosecutor was entered, the fastening of the door having been cut and property belonging to Gooroochurn was stolen. On going to Mohunnath's house, Urjoonnath pointed out a bundle of stolen property which he said had been hidden by Mohunnath. The same bundle referred to in case No. 2. Under the circumstances therein related, I convict Beldoor and acquit others.

In trial No. 8.—The prosecutor's house was entered in Srabun or Assin, by cutting the string of the door, and a brass *tuslah* and some clothes were stolen. The *tuslah* was found with Kaleenath under the circumstances narrated in case No. 4, and some clothes in the bundle pointed out by Kaleenath, as narrated in case No. 2. I convict Beldoor, as before upon his own confession, of privity and of being an accessory after the fact, and Urjoonnath of privity and acquit the remaining prisoners.

In trial No. 9.—The prosecutor's house was entered in Srabun last, and some property was stolen. A *hooka* was found with Sheikh Sufdur which was recognized as belonging to the prosecutor. This, he said had been given him by Mohunnath in payment of a debt, but he was unable to prove the fact, Sheikh Beldoor confessed as before, and I concur with the assessors in convicting Sufdur of being knowingly in possession of stolen property and acquit the others.

Sentence passed by the lower court.—Prisoner Sheikh Beldoor to five years' imprisonment with labor in irons, being a consolidated sentence for offences committed in trials Nos. 2 to 9, and prisoner Sheikh Sufdur to two years' imprisonment with labor in irons, being a consolidated sentence for offences committed in trials Nos. 2 and 9.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The confessions of the prisoner Beldoor, No. 23, are sufficient under the circumstances to warrant his conviction, and as the prisoner Sheikh Sufdur was unable to prove the defence set up regarding the property traced to his possession, I reject his appeal also.

I see no reason to interfere with the sentence passed on these two prisoners.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge*.

GOVERNMENT AND SHEIKH NUZUR,
versus

MUDARUN (No. 1, APPELLANT), MUSSUMUT NUNKEE,
(No. 2,) AND MUSSUMUT MURRACHEA (No. 3.).

Sarun.

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CRIME CHARGED.—No. 1, child-stealing, in having knowingly and feloniously stolen and carried away Hunifa Chookree, aged seven years, granddaughter of prosecutor, for the purpose of selling her or other illegal purpose, Nos. 2 and 3,* with being accessaries before and after the fact.

Case of

MUDARUN and others.

* Released by the sessions judge.

CRIME ESTABLISHED.—No. 1, with having feloniously and knowingly taken and carried away an infant child, aged seven years, from her house with intent to sell or otherwise illegally dispose of her.

The prisoner was convicted of child-stealing.

Committing Officer.—Mr. J. F. Lynch, magistrate of Sewan.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 21st December, 1853.

Remarks by the sessions judge.—This prisoner is shown to have carried away an infant girl, seven years of age, from her grandfather's house, and though it is not very clearly made out what he intended to do with her, it is certain that he took her away and had her with him some ten or eleven days before she was recovered. In his defence he asserts, that he is in the service of the prosecutor (the grandfather of the child) whose sister took of him five rupees and for it made over the child to him, in order that he should get married to her, and then bring her back, and he adds that he took her for this purpose to the house of the witness, Imam Buksh, at mouzah Purwana in Goruckpore, that he was nine days going there, though the distance is but sixteen coss, and that Imam Buksh then refused to perform the ceremoney (*nikah*) without the prosecutor's order and took away the child. Imam Buksh, however, tells a very different story and says, that he first heard of the loss of the child from another party and afterwards saw her with the prisoner, who when he saw him ran off and left the child with him, when he took her back to her friends. The child is a mere infant, and it is quite improbable that she could have been consenting to her abduction, and though it is not shown that the prisoner ever tried to sell her, and it is impossible to say what he intended to do with her, it is certain that he carried her off from her friends and that he only could have done so from improper and illegal motives. The Moulovee convicts the pri-

1854. soner and makes him liable by "*tazeer*," and agreeing with his finding, I have sentenced him for the offence as noted.

March Sentence passed by the lower court.—To be imprisoned for
Case of five (5) years with labor and irons, from the 21st December,
MUDARUN and 1853.
others.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The prisoner's defence, even if true, does not excuse him, for the prosecutor's sister had no power to give the child to him: but from the evidence in the case, it is proved that the child was taken without the consent or knowledge of the guardian. I uphold the conviction and sentence.

PRESENT:

Hooghly.

SIR R. BARLOW, BART., *Judge*.

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GOVERNMENT,

versus

March 17.
Case of
NOBYE ROY.

NOBYE ROY.

CRIME CHARGED.—Perjury, in having on the 24th March, 1853, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the assistant, exercising powers of joint-magistrate of Hooghly, that he bore no relationship to Pertabnarain Roy, such statement being false on appeal.

In a case of perjury a count charging a prisoner with making contradictory statements should only be drawn as the sole or second count, when there are no means of ascertaining which of the two statements is true, or when it may be doubtful whether the true one can be clearly established.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly.

Tried before Mr. J. S. Torrens, sessions judge of Hooghly, on the 27th October, 1853.

Remarks by the sessions judge.—This case was originally reported for the orders of the Sudder Court on the 24th of August, 1853,* in consequence of the *futwa* of the law officer having

* From the sessions judge of Hooghly to the register of the Nizamut Adawlut, No. 19, dated the 24th August, 1853.

"The prisoner is charged with perjury, in having on the 24th March, 1853, in a trial for riot in which his evidence was being taken before the joint-magistrate Mr. Chapman, deposed to two directly contradictory statements on a point material to the issue of the case.

"He pleads not guilty. The case, in which his evidence was taken, was an affray and riot in which Cally Prosunno Chatterjee and Annodopershad Mookerjee were concerned as principals and opposing parties, and both true one can be clearly established.

"Rakhal Doss Sircar was placed under trial as being engaged in the same affray, as follower of Cally Prosunno Chatterjee, and in his defence, named the prisoner as his evidence to prove an *alibi*, and that he had not been engaged on the part of his master in the riot.

acquitted the prisoner of the charge as then laid, considering that under Mahomedan law conflicting statements on oath in the same "*moajlis*," do not amount to perjury.

1854.

March 17.
Case of
NOBYE ROY.

"The object of the opposing party before the magistrate, Annodapershad Mookerjee, was to show that the evidence of the prisoner was biased, that he was related to one Pertab Narain Roy who was at enmity with Annodapershad. The prisoner in his examination before the joint-magistrate, first, distinctly stated that the said Pertab Narain Roy was of the same caste with him, but not related; in his cross-examination by the mookhtear, he admitted that he is son of this Pertab Narain's own brother.

"The evidence taken before the sessions is of Ram Chand and Jadoonath Roy, witnesses, Nos. 1 and 2, who were present, heard and signed the contradictory evidence of the prisoner, and of No. 5, Issur Chunder Roy, who deposes to the same effect, and was the mookhtear who cross-examined

* 3. Bonomally Newgee.

4. Ram Chand Hurkara.

Nos. 6, 7 and 8, were not examined as the magistrate had not been able to cause their attendance, but their evidence not being material, I proceeded with the case.

"The *fatwa* of the law officer acquits the prisoner, as according to Mahomedan law, conflicting statements of such a nature made in the same "*moajlis*" do not, he considers, amount to perjury.

"I am obliged in consequence of this *fatwa* to refer the case for the orders of the Nizamut. I consider that, willfully, the prisoner gave a false statement as to his having no relationship with Pertab Narain Roy, knowing that such statement was of material consequence in the valuation of his testimony, and in the issue of the trial.

"I find various degrees of punishment for perjury, such as committed by this prisoner, have been adjudged in the Nizamut. The case noted in the margin† appears in the degree of guilt somewhat to be similar to the one now referred, and the sentence was of imprisonment for one year. I should be inclined to recommend a higher punishment for all cases of perjury; but not to be much in excess of that awarded by better experience, in the case I have quoted. I recommend the prisoner's imprisonment in labor and irons for a period of three years."

† Nizamut Adawlut Report, volume V. page 175.

Resolution by the Nizamut Adawlut, No. 1056, dated the 2nd September, 1853.—(Present: Sir R. Barlow Baronet, and Mr. J. R. Colvin.)

"The Court, having considered the proceedings held on the trial of Nobye Roy, are of opinion that the proper course in this case would have been to charge the prisoner with perjury in having sworn falsely, when first examined, that he was not related to the prisoner Pertab Narain Roy. The gravamen of the charge is not so much the contradicting statements on oath as the designedly false oath first taken, and had the prisoner been charged with stating on oath, that he was not the prisoner's nephew, though the fact was otherwise, a different view of the case might perhaps have been taken by the law officer. The Court quash these proceedings, and direct that an indictment be prepared against the prisoner in the mode indicated.

"It is only when there is no means of ascertaining which of two statements is true, or when it may be doubtful whether the true one can be clearly established, that a charge of contradiction in the statements should be drawn either as the sole or second count."

1854. The evidence having been held by me sufficient for conviction of the prisoner of the charge of perjury, as detailed in the
 March 17. 7th paragraph of my report abovementioned, I referred the case,
 Case of and recommended a sentence of imprisonment in labor and irons
 NOBYE ROY. for a term of three years.

The Sudder Court, being of opinion that the law officer's acquittal originated in the charge being laid, so as to make the perjury consist in the contradictory deposition, on the 2nd September last, directed a re-commitment simply on the false deposition originally made without reference to the subsequent contradiction. The Moulovee, on re-trial of the case on the fresh commitment, made in the form directed by the Court, convicts the prisoner of wilful perjury; and agreeing in this, on the grounds given in my above report, I sentence him to the punishment, which on the reference I had recommended should be ordered by the Superior Court, viz. three years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) This case was remanded by the Court, and retried by the sessions judge of Hooghly, against whose orders an appeal was preferred on 6th January, and the papers were received by the Court on the 10th instant.

The prisoner was cited to prove *alibi* for one Rakhal Dass Sircar; on cross-examination by Annodapershad, Rakhal's opponent, the prisoner denied that he was in any way connected with one Pertaub Narain Ray, but afterwards admitted he was his nephew.

It is stated by the magistrate that Pertaub and Annodapershad are at enmity; and that the prisoner in order to give his evidence weight, and to procure the release of Rakhal Dass, concealed the fact of his relationship with Pertaub Narain with the view thus to injure Annodapershad.

The prisoner is charged with swearing falsely on a point material to the issue of the case.

The circumstances do not establish such a charge, as to bring the case within the strict meaning of the law. The prisoner is acquitted and must be released.

The Court observe that the prisoner's defence in detail was not taken; he was merely put on his plea of *guilty or not guilty*. Evidence having been then taken for the prosecution, the prisoner should have been called upon for his defence and for his witness in its support.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

KELLYE MULLICK.

Cuttack.

CRIME CHARGED.—Wilful murder of his new born infant daughter, in having, on the 20th January, 1854, corresponding with the 9th Magh, 1261, exposed and abandoned her in an unfrequented jungle and thereby caused her death.

1854.

March 17.

Case of
KELLYE MULLICK.

Committing Officer.—Mr. G. C. Fletcher, joint-magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 16th February, 1854.

Remarks by the sessions judge.—The principal facts of this case are clearly and succinctly narrated in the words of the committing officer, Mr. G. C. Fletcher, joint-magistrate of Cuttack, which are as follows.

The child exposed having been weakly and not likely to live, it was held that although death followed, the charge of murder could not be sustained.

On the morning of the 20th January, 1854, the prisoner's wife gave birth to three female children, the first two alive and the third dead. The last the father buried with the assistance of his caste fellows. Of the two alive children, the father selected the weaker, carried it out in an earthen vessel to an unfrequented jungle at a distance of two or three arrow flights from his house, and there deposited it naked among thorns, taking it out of the earthen vessel in order that the birds of prey might more readily dispose of the body. The motive, which led to the exposure and abandonment of his new born infant daughter, was the belief that the birth of three children at once was of evil omen to the zameendar, the Government and the country, and the consequent fear of expulsion from his village in case the portentous occurrence became known. The abandoned infant was found alive about noon of the same day, but so much exhausted and debilitated from want of sustenance and exposure to the air, that it died before evening or almost immediately after it was discovered.

The manner in which the crime is alleged to have been traced to the prisoner is, that after the arrival of the police jemadar, on the morning following that on which the child was found, Dhunnee Mullick, the Kundy of the village, in which the prisoner lived, informed the jemadar that Kellye Mullick's wife had been delivered of two children, one alive and the other dead, and suggested that she might have had a third child; that the jemadar then proceeded to the house of Kellye Mullick and interrogated him as to the number of children that had been

March 17.
Case of
KELLYE MUL-
LICK.

born and he said two, one alive and one dead ; that the jemadar then asked who attended as midwife on the occasion, and on his naming Musst. Goorbaree, witness No. 8, the jemadar went to her house and learned from her that Musst. Gelai, the prisoner's wife, had been delivered of three children, two alive and the third dead ; and that on the jemadar's returning to the prisoner and telling him what Goorbaree had said, he confessed and stated that his wife had three children, two alive and one dead ; that he had abandoned one of them in the jungle and that the other was in his house, and that he had buried the dead one. But as Mussumut Goorbaree was living in the house of Nubbeen Mullick, the chowkeedar of the prisoner's village, at the time of the extraordinary birth, and Up-
pertee Mullick and Juggye Mullick, witnesses Nos. 12 and 13, who were among the parties called to the spot where the child was found lying before Dunnys Mullick, chokeedar, went to give information at the thannah, assisted in burying the stillborn child prior to their seeing the child in the jungle, it is to be inferred that it was known from the very first that the prisoner was the father of the abandoned child.

Witness No. 8, Mussumut Goorbaree, deposed to Mussumut Gelai, the wife of the prisoner, having given birth to three daughters, two alive and the third dead.

Witnesses, Nos. 9, 10, 11, 12 and 13, deposed to having seen the child lying in the jungle on the point of death, though their evidence is contradictory as to whom each of them saw at the place where they saw the child.

Witnesses Nos. 1, 2, 3 and 4, deposed to the prisoner having made a voluntary confession in the mofussil that he abandoned the child, where it was found in the jungle that it might die, assigning as his reason for so doing, the one recorded in the report of the joint-magistrate above cited. There is, however, a contradiction between statements of witness, No. 1, the police jemadar, and the other witnesses, Nos. 1, 2 and 3 ; the former stating that the confession was recorded at 7 P. M. of the 21st January, and that the prisoner pointed out the spot where he placed the child the next day, and the others that the confession was recorded at about 10 A. M. of the 21st January, and that the prisoner pointed out the spot where he abandoned the child the same day. But I conclude that the jemadar's statement must be the correct one, though the witnesses told the same story before the joint-magistrate four days after the occurrence.

Witnesses Nos. 5 and 6, deposed that the confession made by the prisoner before the joint-magistrate, which was to the same effect as that recorded before the police jemadar, was voluntarily made.

Before this court, Kellye Mullick, the prisoner, pleaded *not guilty*, and stated that his child was dead when he threw it into

the jungle. But on being asked whether he had any objection to urge against the assertion that his wife had been delivered of three girls, he admitted the fact. And being further questioned why if two of three died, he buried one and threw the other in the jungle? he said he was not in possession of his senses at the time.

The *futwa* of the law officer convicts the prisoner, Kellye Mullick, of the crime charged on his own confessions, and declares him liable to the punishment of *deyut* in consequence of the consanguinity between him and the deceased. And in his conviction I fully concur, and under the peculiar circumstances, which induced the ignorant man to put an untimely end to one of his offspring, while he cherished the other, I beg to recommend that he be sentenced to imprisonment for life in the Cuttack jail.

From the omission on the part of the police and the joint-magistrate to hold direct enquiry or adduce any evidence regarding the fact of the prisoner's having really buried the stillborn child, or to ascertain the place of burial, I was, owing to the rareness of such an occurrence, puzzled up to the time of reading the prisoner's confessions at the close of the trial, to know whether his wife had actually been delivered of three or two children, for all the witnesses denied knowing anything about the third child, except from the statements of Mussumut Goorbaree and the prisoner, notwithstanding, as I have already recorded, Up-pertee Mullick and Juggye Mullick, had assisted in burying the stillborn child; and this circumstance will account for the numerous questions put to the different witnesses on the subject.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) From the confessions of the prisoner and the deposition of Mussumut Goorbaree, who acted as midwife on the occasion, it is clearly proved that his wife gave birth to three children, one stillborn and the other two living. The former was buried, and one of the latter was exposed in order to procure its death. It is doubtful, however, whether it could have lived in any case, for one of the two born alive, is described by the above witness as a very weakly infant, scarcely giving hopes of surviving, and by her own account, dismayed at the extraordinary birth, she at once quitted the house, leaving the father to look after the children with their mother in a senseless state after labor and incapable of attending to them, or giving them nourishment. The child likewise was found so shortly after exposure, that had it been strong and healthy, it would most likely have lived. The prisoner states it was the weakly one of the two which he exposed and there is no disproof of this.

I convict him of exposing his new born infant daughter, with intent, and under circumstances most likely, to cause its death, but with reference to the peculiar features of the case, I only sentence him to imprisonment for fourteen years with labor and irons.

1854.

March 17.

Case of
KELLYE MUL-
LICK.

PRESENT :

A. DICK, Esq., *Judge.*

Rungpore.

GOVERNMENT,

1854.

versus

March 18.

EFATOOLLAH.

Case of
EFATOOLLAH.

Prisoner con-
victed of per-
jury and sen-
tenced to three
years' im-
prisonment.
Appeal re-
jected.

CRIME CHARGED.—Perjury in having on the 6th October, 1853, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the darogah of thannah Sherepore, that he, the defendant, and the thannah jemadar had not been beaten, that the property found in the house of Alum a defendant in a case of theft had not been carried off by any one, and that he had not written or sent any letter to the darogah from the mofussil and in having on the 17th October, 1853, again intentionally, and deliberately deposed under a solemn declaration taken instead of an oath, before the deputy magistrate of Bograh, that the ryots of Kochooparah had beaten him, the defendant, and the jemadar rescued the said stolen property and that he had written the letter (appended to the proceedings) to the darogah from the mofussil, such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. R. H. Russell, joint-magistrate of Bograh.

Tried before Mr. William Bell, sessions judge of Rungpore, on the 4th January, 1854.

Remarks by the sessions judge.—The statement of the magistrate "that the jemadar of thannah Sherepore was on the 3rd October, deputed to investigate a charge of theft preferred by one Azoolah Pramanick against Alum. The prisoner Efatoollah, who was acting as a burkundaz attached to the thannah, accompanied him. On the 5th October, Puran Chowkeedar witness No. 4, came to the darogah with a note, which he professed to have obtained from the prisoner, and told him that a cloth belonging to the prosecutor having been found in searching the house of Alum, the villagers had risen in a body, carried off the cloth and beat and confined the jemadar and burkundaz. Some burkundazes were despatched to render them aid, but on the 6th, the jemadar and burkundaz arrived, the darogah took their depositions, when they denied that any disturbance had occurred, and the prisoner denied that he had sent any letter to the darogah. The case of theft was subsequently made over to the deputy magistrate, who examined the jemadar and burkundaz. The jemadar adhered to his statement that no violence had been shewn him, but the

burkundaz deposed that both he and the jemadar had been beaten, that when the villagers dragged the jemadar into the house, he ran away to the prosecutor's village and that he had sent the letter to the darogah to apprise him of what had occurred, but that on being ordered by the jemadar not to mention the beating he had, on being examined by the darogah, denied it, is fully borne out by the evidence before the sessions court. The prisoner admits his guilt, and brings forward in extenuation four witnesses to show he merely obeyed the orders of the jemadar, but they prove nothing more than that the prisoner had told them so.

The law officer returns a verdict of guilty and I agree.

Sentence passed by the lower court.—Imprisonment with labor without irons for three (3) years.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. Dick.) The Court see no reason for interference with the sentence passed on the prisoner, petitioner; the crime of perjury being fully proved against him.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND SREMUTTY AKIMA BEBEE,

versus

AKBUR ALI.

Chittagong.

CRIME CHARGED.—Wilful murder of his wife Zeenut Bebee.

CRIME ESTABLISHED.—Culpable homicide of his wife Zeenut Bebee.

Committing Officer.—Mr. J. R. Muspratt, magistrate of Chittagong.

Tried before Mr. O. W. Malet, officiating additional sessions judge of Chittagong, on the 20th December, 1853.

Remarks by the officiating additional sessions judge.—On the evening of the 16th September, 1853, or 1st Assin, 1260, B. s. defendant who was suffering from fever called to his wife to light a fire for him; she being otherwise engaged did not do it, and it was lit by his mother; he and a relation who was present, sat down by it, and presently the wife came in, defendant called out to her not to come, but on her entering, caught up a billet of wood about ten inches long by three inches diameter of very light wood, and threw it at her with his left hand, his right being held by his mother and relation to prevent his doing so, the deceased was struck on her side, she fell and died that same evening, her mother-in-law, the relation and defendant rendering her assistance in vain.

1854.

March 18.

Case of
EFATOOLAH.

1854.

March 18.

Case of
AKBUR ALI.

Prisoner convicted of the culpable homicide of his wife and sentenced by the sessions judge to seven years' imprisonment. In appeal the sentence reduced to six months.

1854.

March 18.

Case of
AKBUR ALI.

The evidence confirms the above in all particulars, the surgeon having left the station, his evidence was not available, but before the magistrate he gave his opinion on oath to the fact, that the death was caused by an effusion of blood from ruptured spleen, and that the rupture might have been effected by a blow, it being in a diseased state; witness, No. 2, speaks to the deceased having suffered from complaint of the spleen.

The defendant confessed both in the mofussil, and before the magistrate; before me his defence can hardly be called a denial, he says that he threw the log of wood at some fowls, and that it might have hit the deceased, and that he was out of his senses at the time from fever; the evidence shews that there were no fowls for him to throw at, and also disproves his excuse of derangement.

From the evidence and the deposition of the prisoner, there can be no doubt but that the deceased came to her death, from the blow of the billet of wood thrown by the prisoner, but I acquit him of all intention of murder; indeed after the fatal act was done, he seems to have done what he could to render assistance; still he has committed in the fury of passion an act by which a life was lost.

The assessors, with whose assistance I tried the case, find the prisoner guilty of *kutl shubeh and* "culpable homicide."

With this I concur, and with reference to a case of nearly the same description, as reported in volume II. No. 155, Nizamut Adawlut Reports, "Khoonoo," but considering that in this case, the defendant had not the provocation of abusive language, and again that he could not possibly have expected death to follow his act, the billet being very light, and again that he was under the influence of fever at the time, I convict of culpable homicide and sentence to imprisonment with labor in irons for seven years.

With regard to the magisterial proceedings, I find nothing worthy of notice except that no less than three witnesses were absent, and no reason for this absence tendered by the magistrate, which should I think have been done, fortunately (excepting the medical man whose absence was unavoidable) this evidence was not material to the case; as regards the absence of the surgeon, I think it would be advisable to direct one of the subordinate native medical attendants attached to every civil station, to attend at all *post mortem* examinations, as then we should have the evidence of two witnesses instead of one, as is now the case, and when one was unavoidably absent the other would be still available.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) Notwithstanding the case referred to by the officiating additional sessions judge in volume II. No. 155, of the Nizamut Reports, under the circumstances stated by the sessions judge the punishment awarded by him seems to me most unnecessarily severe.

The prisoner, in his appeal, has admitted every thing stated by the sessions judge to have been proved against him.

There does not appear to have been the remotest intention on his part to inflict any serious injury on his wife, the direction accidentally given to the bit of wood thrown by the prisoner at his wife unfortunately made the blow prove fatal, as the woman was suffering from disease of the spleen, but there is nothing in the circumstances of the case, that justifies the infliction of more than a few months' imprisonment. I therefore reduce the sentence to simple imprisonment for six months, commencing from the date on which the prisoner was committed to jail after conviction.

1854.

March 18.

Case of
AKBUR ALI.

PRESENT :

A. DICK, Esq., Judge.

HARROO SHEIKH AND GOVERNMENT,

versus

MEENAH SHEIKH (No. 1.) ATWAREE SHEIKH (No. 2.)
KULLUM MUNDUL (No. 3.) AND JUREEF SIRDAR
(No. 4, APPELLANT.)

Rungpore.

CRIME CHARGED.—1st count, committing burglary with assault of Gour Monce Debya and theft of property to the value of Rs. 582-13; 2nd count, accessaryship before and after the fact; 3rd count, knowingly receiving the stolen property; 4th count, privy.

1854.

March 18.

Case of
JUREEF SIR-
DAR & others.

CRIME ESTABLISHED.—Nos. 1 and 2, burglary with assault and theft of property to the value of Rs. 582-13, No. 3, accessaryship before and after the fact, and No. 4, knowingly receiving the stolen property.

Committing Officer.—Mr. F. S. Davis, joint-magistrate of Serajgunge.

Tried before Mr. William Bell, sessions judge of Rungpore, on the 7th January, 1854.

Remarks by the sessions judge.—It is shown from the statement of the prosecutor and witnesses, that the house of Gour Monce Debya, in the jurisdiction of thannah Ryegunge, in Serajgunge, was broken into, she herself bound hand and foot and property valued at Rs. 582-13, taken away. The prisoners, No. 1, Meenah Sheikh, and No. 2, Atwaree Sheikh, confessed to the burglary, both before the darogah and magistrate, and Kullum, confessed before the darogah and magistrate to being an accessary; twenty pieces of property, consisting of silver and gold ornaments, &c. were discovered near the houses of the

Two prisoners convicted of burglary with assault, another as accessary before and after the fact, and a fourth of receiving the stolen property. The last prisoner appealed, but both conviction and sentence were upheld.

1854. different persons and recognized as Gour Monee's stolen property. Before the sessions all plead *not guilty*, deny their confessions and produce witnesses, but not a single item of evidence in their favor is elicited, and I see not the slightest reason to doubt their confessions, backed as they are by the property produced by them or found by others.

March 18.

Case of
JUREEF SIR-
DAR & others.

The law officer convicts all, and I agree.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The Court see no reason for interference with the sentence passed against the prisoner, No. 4, Jureef Sirdar, petitioner.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT AND CHUTTOO PASBAN, GOMASHTA,

versus

PULUT (No. 1,) BUSTEE PASBAN (No. 2,) BHEE-KHAREE (No. 3,) CHUMMUN (No. 4,) BERJABIND (No. 5,) RAJBUNSEE GORAET (No. 6,) BUNNOO (No. 7,) SHEONATH (No. 8,) GOGUL (No. 9,) MU-NOHUR RAE (No. 10.)

Tirhoot.

1854. CRIME CHARGED.—1st count, all the prisoners are charged with riot and assault and the plunder of a boat laden with 950 mds. of grain, valued at Co.'s Rs. 937-8-6, and with afterwards sinking the said boat; 2nd count, prisoners, Nos. 1 to 5, with knowingly retaining in their possession part of the property, amounting to 10 maunds 7½ seers, valued at Rs. 7-11-9 knowing it to have been acquired by riot with assault and plunder.

March 21.
Case of
PULUT and
others.

Ten prisoners convicted by the sessions judge of riot and assault and plunder of a boat and with sinking the boat. In appeal the sentence of three was reduced to twelve months, and the rest acquitted.

CRIME ESTABLISHED.—Prisoners, Nos. 1 to 10, riot and assault and plunder of a boat laden with 950 maunds of grain, valued at Co.'s Rs. 937-8-6, and with afterwards sinking the said boat.

Committing Officer.—Mr. A. E. Russell, magistrate of Tirhoot. Tried before the Hon'ble R. Forbes, sessions judge of Tirhoot, on the 3rd January, 1854.

Remarks by the sessions judge.—The prosecutor, who was in the employ as gomashta of Juggroo Sahoo and Mahabeer Loll, was returning in September last from Maldah, in charge of a boat laden with 950 maunds of grain of kinds, viz., barley, pulse and rice and pease, to mouzah Jafferabad in this zillah, and having arrived about 4 P. M. of the 3rd September, or 16th Bhadoor, 1260, F. s., near mouzahs Chuck Sooltan and Chuck

1854.

March 21.

Case of
PULUT and
others.

Mahomed on the banks of the Ganges, about three coss distance from Jafferabad, was obliged, owing to the mast of the boat breaking, to come to anchor near the above mouzahs. Upon this, the prisoners, Bunnoo, No. 7, and Gogul, No. 9, and one Rum-mur, (not apprehended) leaving the boat, went ashore into the villages, where their homes were, and very soon after returned with sixty or seventy men, who having set upon the prosecutor, beat him, and, having plundered the boat of the whole of the grain, carried it off in five boats of their own, after which they sunk the prosecutor's boat. The prosecutor deposed at the thannah to his recognizing, among the plunderers, seven of the prisoners (besides others not yet apprehended,) viz. Gogul, No. 9, Bunnoo, No. 7, Sheonath, No. 8, Puleet, No. 1, Chum-mun, No. 4, Munohur Raee, No. 10, and Berjabind, No. 5. In the fouzday court, he recognized all the ten prisoners (except Birjabind with several others not taken up) and in this court, he also recognized them all and others not yet secured.

In the houses too, of five of the prisoners, grain was found which constituting the 2nd count against them, and, although claimed and said to be recognized by the prosecutor, was evidently an article not susceptible of clear, satisfactory and unmistakable recognition.

Six of the defendants having been made witnesses by the magistrate, twelve persons were adduced as eye-witnesses for the prosecution, and their evidence brings home the charge to the accused, all the prisoners being named and recognized, as having been among the rioters engaged in plundering the boat, by more than two witnesses for each in the mofussil, before the magistrate, and in this court, with the exception of the prisoner Munohur Race; this prisoner named by the prosecutor, in his deposition at the thannah, and named and recognized by him both in the fouzday and this court, was recognized by only one witness, viz., No. 1, in the fouzday court, but by that witness and four others in this court, all of whom plainly identified the prisoner, and these latter four witnesses, when interrogated as to why they did not name and recognize prisoner No. 10, in the fouzday court, answered, that they had done so and did not understand why his name was not written down in their evidence. It also appears from the report of the darogah of Hajeepoor (deputed to make a second investigation) dated the 2nd of October, 1853, that this prisoner, with others, had, since the first enquiry into the case and the parties being sent in, absented himself with his family and left his house empty.

Prisoner Pulut, No. 1, pleaded in his defence that on the mast breaking, the boat was of itself sinking, when the witnesses, Nos. 6 and 8, the *manjhee* and *mullah* of the boat seized him (prisoner) and his boat, and put on board ten maunds of pulse and the next morning, Juggroo Sahoo and Mahabeer Lall came

1854. and took away their grain from his boat and gave him ten or twelve *punsurees* to eat; he called two witnesses, one of whom
 March 21. was not forthcoming, and the other did not prove that the
 Case of owners had given him any grain.
 Prisoners Nos. 2, 3, 4, 6, 8 and 10, pleaded an *alibi*, but the
 evidence of their witnesses did not exculpate them.

Prisoner No. 5 pleaded that he was forced to take a share of the plundered grain by one Suroop Singh, (not apprehended) to prevent him (prisoner) from giving evidence. The two witnesses, however, whom he called, knew nothing.

Prisoners Nos. 7 and 9 pleaded that when the mast broke, and the boat was sinking, the boatmen called them (prisoners) and three boats having been brought, thirty or forty maunds of grain were laden thereon, and the prosecutor's boat sunk, one of which boats was taken away by the villagers of Futtehpore and the next morning the owners of the grain, Juggroo Sahoo and Mahabeer Loll, and witness, No. 1, came and divided the grain among themselves and departed and those persons having wanted them (prisoners) to complain against the Futtehpore people, they (prisoners) refused, in revenge for which the owners implicated them. Each of these prisoners called witnesses, but their evidence did not exculpate those who cited them, in particular the four witnesses of the prisoner, Munohur Raee, No. 10, all of his own caste, though they spoke to the prisoner's having gone to the same place (mouzah Buhsee) as themselves in the middle of Sawun and where he remained, as they stated, until after the 16th of Bhadoon, or date of the occurrence, which led to his trial, yet none of them specifically swore to the prisoner's not being present at the riot and plunder of the boat, the distance, according to the prisoner himself, being only seven coss.

The *futwa* of the law officer, convicting all the prisoners on the 1st count, in the indictment, declares them liable to discretionary punishment by *tazeer*, and as I concurred in this finding, though the prosecutor did not appear to have been severely beaten, the prisoners have been sentenced as shewn in the proper column.

Sentence passed by the lower court.—Prisoners Nos. 1 to 10, each to be imprisoned with labor in irons for the period of five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) The facts of this case, as collected from the several statements on the record, appear to be that prosecutor's boat struck on a sand bank and broke up. Assistance was called for from the villagers who came and helped to carry off the grain, but before this could be effected the boat went to pieces and the boat sank in deep water. No trace of it could be found when the police arrived.

It is highly probable that the villagers seeing that the boat

was a total wreck, did, as it was sinking, carry off some of its cargo. But the evidence is not at all satisfactory as to the identification of the prisoners who have been convicted.

The prisoner No. 1 admits he got some of the grain, so does the prisoner No. 5. Prisoner No. 2, is the Pasban of the village Chuck Mahomed whence those who came to the boat were called. Four of the eye-witnesses, residents of the Patna district, state they were on their own boat proceeding on the river and seen what occurred. The others are the boatmen and manjee of the sunken boat; they were defendants in the case and were subsequently made witnesses. They depose to the identity of the prisoners, but their evidence before the magistrate and in the sessions varies and cannot be trusted.

The case is one which was quite within the competence of the magistrate, and need not have been committed to the sessions. It resolves itself into one of very minor importance, when divested of all the exaggerations of the prosecutor and his witnesses.

I convict the prisoners Nos. 1, 2 and 5, of plunder and sentence them to twelve months' imprisonment. The others, Nos. 3, 4, 6, 7, 8, 9 and 10, are acquitted and must be released.

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Case of
PULUT and
others.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

MUSSUMUT PHOOLBASSEE AND GOVERNMENT, .

versus

NIRBHAN BHUGUT.

CRIME CHARGED.—Knowingly issuing counterfeit rupees.

CRIME ESTABLISHED.—Knowingly issuing counterfeit rupees.

Committing Officer.—Mr. W. F. McDonell, assistant magistrate with full powers of joint-magistrate, of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 13th December, 1853.

Remarks by the sessions judge.—The prisoner has been convicted of knowingly issuing counterfeit coin. He went to the shop of the prosecutrix, and asked her to change a rupee for pice, and on her agreeing to do so, gave her a bad rupee, upon which he was taken off to the thannah by a chowkeedar who was present at the time, when two other counterfeit rupees were also found upon him. He stated then as he still states, on his trial, that he did not know that they were bad, and that he purchased them (he does not know from whom) a long time back in the Gorukpore district with pice he had collected by

Sarun.

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Case of
NIRBHAN
BHUGUT.

Prisoner convicted of knowingly issuing counterfeit coin and sentenced to two years' imprisonment. Appeal rejected.

1854. begging; but this account (all the rupees found on him being counterfeit) is quite incredible, and I have no doubt whatever but that he came here with others (and this is a common offence in this district) to pass them here. The moulvee convicts and holds him liable by "*tazeer*," and concurring with him in this finding, I have sentenced the prisoner as noted in the proper column.

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Case of
NIRBHAN
BHUGUT.

Sentence passed by the lower court.—Imprisonment for a period of two (2) years, without labor and irons, from the 13th December, 1853, and to pay a fine of (30) thirty rupees within one month from the above date, or in default of payment, to labor until the fine be paid or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoner pleads that he was not aware the rupees were counterfeit, but the discovery of two more rupees of the same kind in his possession, strongly supports the presumption that he was knowingly attempting to pass the counterfeit for good coin, and I therefore reject his appeal.

PRESENT:

SIR R. BARLOW, BART., and
H. T. RAIKES, Esq., *Judges*.

GOVERNMENT AND UMBICA CHURN CHOWDRY,

versus

24Pergunnahs. KEDARNATH CHOWDRY (No. 1,) AND SURROOP
CHUNDER CHOWDRY (No. 2.)

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Case of
KEDARNATH
CHOWDRY &
another.

CRIME CHARGED.—Charge I. 1st count, wilful murder of one Hurish Chunder Chowdry, against prisoner, No. 1; 2nd count, felonious and malicious assault on one Hurish Chunder Chowdry, with a bamboo and a *korrah* (a pointed weapon) whereby his death was immediately caused, against prisoner, No. 1.

Charge II. Instigating, aiding and abetting the assault on Hurish Chunder Chowdry whereby his death was caused, against prisoner, No. 2.

Two prisoners, father and son, were charged, the latter with wilful murder and the former with aiding and abetting. The father was acquitted, but the son sentenced capi-

Committing Officer.—Mr. E. Jenkins, magistrate of Howrah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24 pergunnahs, on the 9th December, 1853.

Remarks by the officiating additional sessions judge.—The prisoner, Kedarnath Chowdry, is charged, 1st count, with wilful murder; 2nd count, with felonious and malicious assault issuing in homicide, and the prisoner, Surroop Chunder Chowdry, with instigating and aiding and abetting the said assault. They stand in the relation of father and son and plead *not guilty* to the indictment.

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another.

The facts of the case are as follows: On a piece of land formerly in the possession of the prisoners, but now the property of the prosecuting party by purchase, stood some plantain trees. One of these trees appears to have been cut down by the prisoner, Kedarnath Chowdry, against the remonstrances of the prosecutor. The circumstance led to an altercation between Kedarnath and the prosecutor's father, Hurish Chunder Chowdry, who was apprized of the occurrence on his return home. Sounds of quarrelling were subsequently heard by the prosecutor and the

tally. Execution of the capital sentence was suspended and the case sent back to the sessions judge on an application made on behalf of the prisoner, that a petition presented by him to the jail darogah, citing witnesses for his defence, had not been presented to the magistrate, after examining these witnesses the judge again reported, and the Court gave effect to their former sentence.

* Nos. 1, 2, 3, 4.

witnesses noted in the margin,* who, on rushing to the spot, saw the prisoner, Kedarnath Chowdry, first knock Hurish Chunder Chowdry down by a blow on the side of the head with a club, and afterwards stab him with a short spear on the chest, from the effects of which he died then and there. The prisoner is represented as having the spear in his left hand, while using the club and transferring it to the right hand in inflicting the fatal wound.

† Witness No. 7.

The civil surgeon† proves that on the *post mortem* examination of the body of Hurish Chunder Chowdry, there appeared a somewhat ragged punctured wound rather less than an inch in length, between the third and fourth ribs entering the main artery of the chest and traversing one of the cavities of the heart. This wound is believed to have caused almost instantaneous death and been produced by a narrow pointed, but somewhat blunted instrument, not necessarily applied with force.

The prisoners, father and son, are alleged to have taken refuge

‡ Witness No. 5.

in the house after the perpetration of the murderous attack and were arrested there by the police.‡

§ Nos. 9, 10.

The witnesses, noted in the margin,§ prove the record of the inquest held on the body of the deceased by the darogah.

|| Witnesses, Nos. 11, 12. And those, similarly noticed,|| attest the confessions of the prisoners before the police.

The mofussil confession of the prisoner, Kedarnath Chowdry, goes to show that in consequence of his having cut down one of his own plantain trees, the prosecutor and deceased, with other members of the family, came *en masse* to assault him and his father; that they took refuge in their house and closed the door; that fearing lest the door should be forced, he sallied out and taking a stick from one of the assailants struck the deceased two or three blows. It repudiates the use of the spear by the prisoner and insinuates that the deceased committed suicide, and that his relatives have charged the prisoner with murder in conformity with threats before held out.

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another.

The mofussil confession of the prisoner, Surroop Chunder, is in substance the same as that made by his son, with this difference that it makes no allusion to the threat stated by that individual, and implicates the witnesses for the prosecution in addition to the members of the prosecutor's family.

The confessions of the prisoners before the magistrate are

* Witnesses, Nos. 13, 15. verified by the witnesses marked in the margin.* That of the prisoner, Kedarnath Chowdry, corresponds in all essential points with his recorded admissions before the police, but that of the prisoner, Surroop Chunder Chowdry, differs from them in the matter of having used his hands instead of a stick.

The prisoner, Kedarnath Chowdry, makes no defence before this court, except that the charge is false and maliciously brought. He denies having made any admissions of crime and trusts to his witnesses to say all they can in his favor.

The prisoner Surroop Chunder Chowdry states that the deceased and his son, the prosecutor, came to his house in a state of drunkenness and that he closed the door on them, and that two or three hours afterwards, he and his son were charged with murder, and arrested by the police in their house. He also denies having made any confession.

† Witnesses, Nos. 16, 17, 18, 19, 21, 22, 27. The witnesses, marginally† noticed, were examined on behalf of the prisoners, but they disclaimed all knowledge of the facts pleaded in defence.

The *futwa* of the law officer convicts the prisoner Kedarnath Chowdry of the wilful murder of Hurish Chunder Chowdry and declares him liable to "*kissas*." It also convicts the prisoner Surroop Chunder Chowdry of being an accomplice in the murderous assault, and declares him liable to discretionary punishment by "*akoobut*."

I concur in the conviction of the prisoner Kedarnath Chowdry and considering him guilty of a wanton and unprovoked murder, recommend that he be sentenced to suffer death. I am not very clear as to the guilt of the prisoner Surroop Chunder Chowdry to the extent of the finding. That he was present at or near the spot, where the fatal assault was committed by his son, appears extremely probable, but I question whether he was seen by the parties, who have deposed to his complicity, as two out of the four witnesses state that he ordered the assault from behind the enclosure wall of his premises, and that they identified him by his voice. This evidence again runs directly counter to his admissions, which amount to actual participation in the attack. My own belief is that he took no active part in the assault, but perceiving the serious dilemma into which his son had been betrayed by his own temerity and violence, his paternal feelings overcame all other considerations and induced him to

make admissions contrary to facts, with the view of clinging to his offspring and abiding by his fate. This motive alone, in my opinion, induced his confessions, and I cannot therefore regard them either as admission of crime, or exposition of the truth. The prisoner is a weak nervous old man, and appeared to me at times during the trial to be scarcely in the possession of his proper senses, either from distress of mind or some other cause. In consideration of all these circumstances, though imputing to him a certain amount of culpability, I commend him to the mercy of the Court, and propose that he be admonished and released.

Remarks by the Nizamut Adawlut dated 10th January, 1854.— (Present : Sir R. Barlow and Mr. H. T. Raikes.) We have heard Mr. Norris, who urged on the part of the prisoners, that the only reasonable inference to be drawn from the evidence of the witnesses is, that some assault was first committed on the prisoner and his father by the prosecutor and the party with him, which led to a mutual affray, in which the deceased was killed ; that the fact of his death having been caused by a spear wound, inflicted by the prisoner Kedarnath, is open to much doubt, as, though the prisoner admits having struck deceased with a club, he denies the use of the more deadly weapon, and although he was shut up in his house and a watch placed over it by the chowkeedar till the arrival of the police, a few hours afterwards, no spear or weapon of the description was found there, notwithstanding every search was made on the premises with that object.

We are constrained to say that the evidence does not afford any ground for entertaining the presumption pressed upon us by the pleader.

The depositions of the witnesses are consistent enough, on the point in question, and lead to the conclusion that the prisoner himself commenced the assault and stabbed the deceased. There is no evidence to show that on the part of the prosecution and the deceased, there was any combined intention to attack the prisoner, or that the deceased proceeded to the house of the prisoner, with any other object than to complain of his having cut down the plantain tree, and we find no ground to suppose that any mutual affray ensued.

There was, moreover, no apparent delay or hesitation in naming at once to the police those who were present at the time, nor any unwillingness in the witnesses to tender evidence to the facts ; such might have been the case had they been tutored, or had it been thought necessary to concoct a story with the view of exculpating the prosecutor and of criminating the prisoners more deeply.

As to not finding the spear, we remark that the prisoner was in his house for some hours, which was closed from all observation and he had ample opportunity of burning or melting the

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spear, or otherwise destroying it, or preventing its discovery, so that the fact of its not being found, adds nothing in favor of the prisoners.

We see no reason for any mitigation of punishment against prisoner Kedarnath and, therefore, in concurrence with the opinion of the sessions judge, we convict him of wilful murder, and sentence the prisoner capitally.

Seeing however no reason to believe the prisoner, Surroop Chunder was implicated in the murder, we acquit him of the crime.

On the motion of Mr. R. Norris, pleader for the prisoner Kedarnath Chowdry, the Court (present: Sir R. Barlow, Bart. and Mr. H. T. Raikes) recorded the following Resolution on the 15th February, 1854.

Read certain returns made to this court's precept of the 17th ultimo, by the officiating additional sessions judge of the 24-pergunnahs, relative to a petition presented to the Court by a prisoner, named Kedarnath Chowdry, on whom sentence of death was passed on the 10th of January last, praying that certain witnesses, named by him, might be heard in his favor.

It appears that after sentence of death had been passed on the prisoner, Kedarnath Chowdry, by the Court, but before any warrant was issued, the prisoner, through his pleader, Mr. Norris, petitioned this Court to the effect that a petition had been drawn up by him, while awaiting his trial in Howrah jail, for transmission to the sessions judge, praying that certain parties might be summoned to give evidence on his behalf before the sessions court, but the witnesses so named by him had not been summoned or heard, and as they were able to give material evidence regarding his innocence of the crime with which he is charged, he prayed that they might be heard before the sentence now passed was carried into effect.

Although the prisoner made no mention of this in his defence, when on trial before the sessions court, nor through his pleader when the case was sent up to this Court for final disposal, though the pleader had ample time allowed him to prepare the case, nor does it appear from the returns now before the Court that the petition alluded to ever reached the magistrate, though delivered to the jail darogah, by the prisoner's friends, yet in a case like the present, where the prisoner's life is at stake, the Court are unwilling to deprive him of an opportunity of making good his defence, and therefore determine to suspend execution of the sentence passed on him, and will direct the officiating additional sessions judge to summon the witnesses cited by the prisoner.

It is therefore, ordered, that the issue of the sentence of death, recorded by the Court, on the 10th of January last, against the prisoner, Kedarnath Chowdry, be suspended and the additional sessions judge of the 24-pergunnahs, who tried the case, be directed to summon the witnesses named by the prisoner, and

after hearing them, he will call for another *futwa* from the law officer, and recording his opinion, submit his proceedings, with those now returned, for the orders of the Court.

In reply to the above resolution the sessions judge submitted the following letter, No. 22, dated 7th March, 1854.

In conformity with the instructions conveyed in the Court's resolution, No. 149, dated 15th February last, relative to the case of the prisoner, Kedarnath Chowdry, referred for final orders by my letter, No. 150, of the 9th December, 1853, I have the honor to transmit herewith the depositions taken this day of such of the witnesses, named in the petition presented by him to the Superior Court, as have been brought before me.

The statements made by the examiners speak for themselves, and their tendency is to show that the affair in which Hurish Chunder Chowdry lost his life was a mutual affray and not a one-sided assault, and that his death was occasioned by his falling on a stake in a hedge, while running towards his house to bring another stick to continue the fight. The stake is represented as having entered his chest and produced immediate insensibility and death in a few hours.

The Court can scarcely fail to be struck with the extreme improbabilities of this evidence and the tutored, methodical manner in which it is given. The feelings alleged to have been evinced by the sons, on the probability of their father's death, and the use to which they purposed turning the event, if consummated, are inconceivably unnatural, and it is impossible to believe that such things really occurred. The accurate repetition of conversation after the lapse of nearly seven months, also tends to cast doubt on the genuineness of the testimony, and the witnesses admit that they have on former occasions given evidence in court.

But the damning part of this evidence is, in my opinion, the contradictory defence it tends to support, namely, that the deceased was killed by falling on a stake, whereas the plea formerly set up by the prisoner was, that the deceased had committed suicide, and that his sons had falsely and maliciously accused him of the murder.

The *futwa* of the law officer again convicts the prisoner of the wilful murder of Hurish Chunder Chowdry and declares him liable to *kissas*.

In consideration of the facts stated in the 2nd paragraph of the Court's resolution, relative to the tardiness with which the prisoner's second defence was made and other circumstances connected with the presentation of the petition which embodied it, I receive with the utmost reservation the fresh evidence taken on his behalf. Its inherent defects, moreover, are great and its cause is marked with extreme improbabilities and a strong suspicion of tutoring. Under these circumstances, I cannot admit it as in any degree exculpatory, and believing the prisoner guilty of

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1854. the murder charged against him, feel it my duty to adhere to my former recommendation, and to propose that he be sentenced to suffer death.

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another.

On perusal of the further proceedings, the following remarks were recorded by the presiding judges, on the 21st March, 1854.

We have again gone through the papers of this case. The facts of this murder are clear, the prosecutor and the eye-witnesses charge the prisoner with the murder. He admits he struck deceased with a club, denies the use of a spear. The medical officer swears that the blow must have been inflicted with a narrow pointed but somewhat blunted instrument, which entered one of the cavities of the heart.

It is still attempted by the pleader to prove that there was mutual affray, and that therefore the offence is not wilful murder, but homicide of a less grave nature. The argument now is, that the prosecutor having told Ishore chowkeedar the circumstances of the murder, and he having reported the same to the police, it is clear from Ishore's statement on the record that the prosecutor himself originally only spoke of mutual affray.

The prosecutor in his deposition swears that he told Ishore to give information at the thannah. He does not here or any where say that the case was one of affray, and if the chowkeedar gave information at the thannah of a mutual affray that is no reason for charging the prosecutor with making two different statements, or disbelieving that to which he swears. But it is to be seen what information the chowkeedar did in fact give at the thannah. He said that he had heard by report that a *danga* had taken place, in which the deceased was killed. Now this was a true report, the deceased was killed; but the chowkeedar's information does *not* allege that there had been *mutual affray*, while the evidence of four eye-witnesses throughout clearly establishes that there was no mutual affray. They describe distinctly the manner in which the *spear-wound* was inflicted by the prisoner, and that wound is sworn to have been the sole cause of death.

The defence of the prisoner, in the first instance before the remand, was in the mofussil an insinuation that the deceased, as he had frequently threatened, had killed himself. The same confession in the main was made before the magistrate. Now the prisoner's self-serving statements that he used a club, will not avail him, when opposed to the oaths of the witnesses and to the fact that the deceased died of a spear-wound, and that wound only, for there was no other but a bruise on the left cheek as shewn by the *post mortem* examination.

Sentence of death was passed on the prisoner, on the 10th of January last. Before its issue, the prisoner pleaded through Mr. Norris that he had not been heard, that several witnesses, whose evidence he desired, had been kept back, in consequence of a petition, which he had drawn up, not having been presented to the sessions judge.

The Court directed that enquiry should be made, and returned the record with the view to have the witnesses named examined. Five witnesses have accordingly been examined, who make the most improbable statements. If they are to be believed, the unmistakable and glaring fact, that the deceased met his death by being staked in a hedge as he was going back for a stick, though known currently, was never mentioned in the prisoner's defence, either before the police, the magistrate, the sessions judge, or even before this Court, when sentence of death was passed on him; nor up to the present date. It must also be believed, that the prosecutor on seeing the accident, which had befallen his father, and which caused his almost immediate death, had the presence of mind to cry out before three witnesses that if the deceased died in consequence of the wound, his corpse was to be laid at the prisoner's door, and he was to be charged with the murder. Such evidence as this, after the lapse of months, given by witnesses whose names were not mentioned throughout the trial and till sentence had been passed on the prisoner, is utterly unworthy of credit.

A petition has, for the third time, been put in by the pleader, calling upon the Court to summon the prosecutor that he may be cross-examined by the prisoner. The Court consider it quite unnecessary, after the lengthy and very comprehensive inquiry, which has taken place in this case, to defer the trial longer. After the closest examination of the circumstances and mature consideration of all that appears on the record, they adhere to the opinion they recorded in January last. They find the prisoner guilty of wilful murder, in concurrence with the sessions judge, and discrediting, as that officer does, the defence now for the first time set up and the evidence on its support, sentence the prisoner to death.

At this stage of the proceedings a petition was filed by Surroop Chunder Chowdry, father of the prisoner, Kedarnath Chowdry, on which the presiding judges recorded the following order, dated 27th March, 1854.

The petitioner, father of Kedarnath prisoner, against whom sentence of death, after a remand for further enquiry had been made, was passed by the Court, on the 21st March, has again applied for postponement of execution of sentence on the ground that a complete investigation has not been held and that a local enquiry will prove that the deceased, Hurish Chunder Chowdry, was killed by staking himself on a hedge. The evidence to this allegation, first brought forward, after the Court had sentenced the prisoner to death, on the 10th January, has already been taken, and for the reasons recorded in the Court's minute of the 21st instant, was rejected. We see no reason to alter the sentence then passed upon the prisoner, which we order to be carried out in due course.

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Case of
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another.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

TEELUCK BAGDY (No. 4,) BECHOO KOWRA (No. 5,) GOBIND KOWRA (No. 6,) GORA CHAND KOWRA (No. 7,) AND JADOO BAGDY (No. 8.)

Hooghly.

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Case of

TEELUCK BAGDY and others.

CRIME CHARGED.—1st count, dacoity in the house of Gya Monee Bewa at Nobogram, on the 21st August, 1850, and plundering property to the amount of Rs. 42, and 2nd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. S. Wauchope, commissioner for the suppression of dacoity.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 1st March, 1854.

The evidence of two approvers was, under the circumstances in which it was recorded, deemed sufficient for conviction.

Remarks by the officiating sessions judge.—The prisoners were committed for trial by the commissioner for the suppression of dacoity upon the charges, 1st, of dacoity in the house of Gya Monee Bewa at Nobogram, on the 21st August, 1850, and 2ndly with having belonged to a gang of dacoits.

The trial was commenced by my predecessor on the 13th of May, 1853, but was postponed for evidence regarding the defence set up by one of the prisoners; it was again deferred on the 22nd July, and the confessions of the approvers having since been before the Court of Nizamut Adawlut in many other trials, the commissioner has until now been unable to resubmit the proceedings to this court. The witnesses were re-called and sworn to the truth of their previous testimony, which was read over to them in my presence. The prisoners pleaded *not guilty*.

The prisoners were apprehended upon the original confessions of the approvers Koylas, witness No. 1, and Muddoosoodun, witness No. 2; Koylas, witness No. 1, deposes that the

4. Teeluck Bagdee.
5. Bechoo Kowra.
6. Gobind Kowra.
7. Gora Chand Kowra.
8. Jadoo Bagdee.

prisoners, Nos. 4, 5, 6, 7, 8, were present with him at the dacoity at the house of Gya Monee Bewah, on the 21st August, 1850, in which he joined at the invitation of the prisoner No. 5.

He likewise deposes to all the prisoners having belonged to a gang of dacoits, and having been associated with him in the commission of many dacoities, which he specifies. The name of the prisoner No. 4, does not appear in the original confession of this approver regarding the dacoity at Gya Monee's house, which he made before the commissioner on the 21st January, 1853. All the prisoners are, however, mentioned therein as

having been engaged in the other dacoities enumerated in the present deposition, and the witness when questioned declared positively to the presence of the prisoner No. 4, at the dacoity with which he is now charged, although he inadvertently omitted to mention him before.

The approver Mudoosoodun, witness No. 2, stated in his confession, made before the commissioner on the 29th September, 1852, that the prisoners, Nos. 4, 5, 6, 7, 8, had accompanied him, the witness No. 1, and others, and borne part in the dacoity at Nubogram, at the house of Gya Monce Bewah, and that they were associated in a gang, and had committed many dacoities with him.

The prisoner, No. 4, stated that the informers have accused him falsely through enmity, in proof of which he averred that at the period of one of the dacoities, in which he is stated to have taken part, viz. that at Koonye Bachah, he was a prisoner in the Hooghly jail. This statement proves to be correct, the only dacoity as far as can be ascertained, committed in this village about the time specified, occurred on the 17th September, 1851, and the prisoner was confined in the Hooghly jail as a bad character, in default of security, from the 30th October, 1850 to the 30th October, 1851. Any doubts which this mis-statement might cast upon the confessions as regards this prisoner, have now been set at rest, he having, while in confinement pending the reference on the subject here adverted to, made a voluntary confession to the commissioner, disclosing his having participated in forty dacoities, including that with which he is now specifically charged in the 1st count of the calendar. This confession he admitted and partially repeated at the trial.

The prisoners, Nos. 5, 6, 7, 8, all plead enmity on the part of the approvers as the cause of their accusation.

They are all, however, named in the confessions of the informers given at different periods and without the possibility of concert, and seeing no reason to impeach the evidence of these latter given in this court, I convict the prisoners, Nos. 4, 5, 6, 7, 8, of both charges, and recommend that they be transported for life with labor in irons.

The record of the dacoity, with which the prisoners are specially charged, and the papers relating to a selected number of the many dacoities alluded to by the approvers, are herewith forwarded. Should the Court, however, determine that every case, in which the prisoners have borne a part should be laid before them, I shall without loss of time, transmit the remainder of those which have been mentioned in the course of this trial.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) Prisoner, No. 4, has confessed as stated in paragraph 6 of the session judge's letter. There is no doubt therefore of his guilt.

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Case of
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1854. The other prisoners have denied throughout, but there is no reason to disbelieve the evidence of the approvers against them. The committing officer certifies that they were kept perfectly separate in different guard-houses, until their confessions were recorded, so that there could have been no collusion between them; and as the officiating sessions judge remarks that their confessions were given at different periods,* and without the possibility of concert, I concur in the finding and proposed sentence.

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* Witness, No. 1, 16th
December, 1852.
Witness, No. 2, 29th
September, 1852.

PRESENT :

A. DICK, Esq., *Judge.*

GOVERNMENT AND MUDHOO MANA,

versus

MUTHOOR SEN (No. 1, APPELLANT) BEPRO UDHIKAREE (No. 2,) MOOCHEERAM DHOBA TANTEE No. 3, APPELLANT) OODOY CHAND CHUCKERBUTTY (No. 4,) NOBIN MYTEE (No. 5, APPELLANT,) NARAIN MANA (No. 6, APPELLANT) GUDDADHUR PATTTER (No. 7, APPELLANT) PREMCHAND KORUNGA (No. 8, APPELLANT) MUSST. PELEE (No. 9,) RADHOO SEN (No. 10, APPELLANT) MUSST.* POORNIMAH (No. 11,) NARAIN SEN (No. 12, APPELLANT) AND MUSST. SOORJEE (No. 13 APPELLANT.)

Midnapore.

1854.

March 22.

Case of
MUTHOOR
SEN and
others.

Eight prisoners convicted of dacoity and four others as receivers, and sentenced by the sessions judge to different terms of imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, prisoners Nos. 1 to 8, dacoity in the house of Oodoy Chand Pundah, master of the prosecutor Mudhoo Mana, and plundering therefrom property to the value of Rs. 1,023-11-9; 2nd count, aiding and abetting in the above dacoity and 3rd count, prisoners Nos. 1 to 13, having in their possession plundered property knowing it to have been so acquired.

CRIME ESTABLISHED.—Prisoners Nos. 1 to 8, dacoity with plundering and having in their possession plundered property knowing it to have been so acquired, and prisoners Nos. 9 to 13, having in their possession plundered property knowing it to have been so acquired.

Committing Officer.—Mr. G. Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 7th January, 1854.

Acquitted by the sessions judge.

Remarks by the sessions judge.—The prisoners plead not guilty. On the night of the 27th September the house of Oodoy Pundah, the master of the prosecutor, was attacked and plundered by a gang of dacoits, of property to the value of Co.'s Rs. 1,023-11-9. By the assistance of witness, No. 65, Pelaran Rana, a clue was obtained which led to the arrest of the prisoner No. 5, Nobin, in the act of making his escape from his house with some of the stolen property in his possession. His confession led to the apprehension of the other prisoners. The prisoners Nos. 1, 2, 3, 4, 9, 10, 11, 12 and 13, confessed in the mofussil and before the magistrate, the first four stated that they had committed the robbery, and the five others that they had given up the stolen property to the police when required to do so. The prisoners Nos. 5, 6, 7 and 8, confessed in the mofussil, but denied their guilt before the magistrate. In this court prisoners Nos. 2 to 8, inclusive plead *alibi*, which they fail to establish. The confessions are clear and circumstantial and fully corroborated by the evidence for the prosecution, the truth of which there is no reason whatever to doubt. The prisoner No. 1, Muthoor Sen, is a confirmed dacoit, and seems on the present occasion, to have been the instigator of the robbery and the leader of the gang. He was only released from jail in 1850, after having undergone a sentence of seven years' imprisonment for dacoity. The prisoner No. 13, Soorjee, was also released in 1847, after undergoing a sentence of five years' imprisonment for the same crime as that on which she is now arraigned, most of the other prisoners are suspicious characters* who have been in custody before on a charge of gang robbery, but acquitted for want of evidence. There are good grounds for presuming that they are members of an organized gang, which infests the eastern part of this district, whose movements are controlled by experienced leaders, one of whom as above stated is the prisoner No. 1. The prisoners are, in my opinion, guilty of the charges preferred against them, and are sentenced accordingly as shewn in this statement.

Sentence passed by the lower court.—Prisoners No. 1, to 14 years, and two years more in lieu of corporal punishment, total sixteen years' imprisonment with labor in irons in banishment; prisoners Nos. 2, 3, 4, 5, 6, 7 and 8, to seven years, and two years more in lieu of corporal punishment, total nine years' imprisonment each with labor and irons; prisoner No. 9, to five years' imprisonment with labor suitable to her sex; prisoners Nos. 10 and 12, to five years' imprisonment each with labor in irons, and prisoner No. 13, to seven years' imprisonment with labor suitable to her sex, and all the prisoners to pay a fine under Act XVI. of 1850, jointly and severally of Co.'s Rs. 848-6-6.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The Court see no reason for interference with the sentence passed against the prisoners, petitioners.

1854.

March 22.

Case of
MUTHOOR
SEN and
others.

1854. They observe, however, for the future guidance of the sessions judge, that the record of the trial in the sessions court, is so very badly written, as to be illegible, without the greatest care; and only after repeated attempts at perusal, intelligible.

March 22. Case of MUTHOOR SEN and others.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

Hooghly.

GOVERNMENT,

1854.

versus

RYECHURN JOOGEE.

March 22.
Case of
RYECHURN
JOOGEE.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Seekur Roy, deputy magistrate under the commissioner for the suppression of dacoity.

The prisoner
was convicted
of having be-
longed to a
gang of da-
coits.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 1st March, 1854.

Remarks by the sessions judge.—The prisoner was committed by Baboo Chunder Seekur Roy, deputy magistrate, under the commissioner for the suppression of dacoity, upon a charge of having belonged to a gang of dacoits.

Having been repeatedly named in the confession of the approver, Neemye Nikaree, witness, No. 1, made upon the 21st October, 1833, the prisoner was apprehended on the 2nd February, 1854, upon a charge of belonging to a gang of dacoits, which he voluntarily admitted before the deputy magistrate, mentioning thirty cases in which he had been concerned.

The prisoner pleaded guilty upon the trial, and the charge is fully proved by the evidence of the approver, witness No. 1, and by his own confession given voluntarily before the deputy magistrate in the presence of the witnesses, Nos. 2 and 3. He declined offering any defence in this court.

I convict the prisoner, Ryechnurn Joogee, No. 4, of the charge, and recommend that a sentence of transportation for life, with labor in irons, be passed upon him.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I concur in the finding of the officiating sessions judge, and sentence the prisoner as proposed by him.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT,

versus

MAHOMED NEWAZ.

Mymensingh.

CRIME CHARGED.—Mutual affray, in which Runjeet Doss and Ainooddeen alias Anoardce were killed and Dhon Gazee severely wounded.

1854.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

March 22.

Case of
MAHOMED
NEWAZ.

Tried before Mr. W. Trotter, sessions judge of Mymensingh, on the 6th February, 1854.

Prisoner

Remarks by the sessions judge.—The particulars of this case were fully detailed by my predecessor, in his remarks on the trial of Gungaram Singh and others, who were sentenced by him to various terms of imprisonment on the 7th July, 1852, and will be found at pages 487, 488, 489, 490, 491 and 492, of the reports of cases determined in the Nizamut Adawlut for the month of April, 1853, (No. 4, Vol. III.) It will therefore be sufficient for the purpose of the present reference, to give the following extract from the remarks of my predecessor as elucidatory of the case.

charged with affray, attended with homicide and wounding, acquitted in accordance with the judge's opinion in opposition to the law officer's *fatwa*. The prisoner having for a time eluded arrest, other prisoners in the case had been already tried. The magistrate ought to have again taken the depositions of the witnesses and confronted them with the prisoner, before committing him to the sessions.

“From the evidence of the witnesses, the defence of the prisoners and ten other criminal cases cited as evidence by them, which were sent for and examined, it appears that even after the marriage of prisoner No. 10, (Zumeerooddeen Khan) with one of the daughters of Nufoo Beebee, disputes arose between him and prisoner, No. 9, (Mahomed Moneer) a grandson of Nufoo Beebee and No. 7, (Karoo Khan) also her relative, in which they were aided by No. 11 (Meer Ikram Hosain), who shortly before this occurrence, took a farm of her property, regarding the house and talook of Nufoo Beebee, and it is alleged by this party that Nufoo Beebee afterwards gave portions of her house and property by deed of gift to No. 9, and two of her daughters, and No. 10, declaring the lease and deeds of gift to be fictitious; numerous complaints were before made charging each other with being about to commit an affray, assault, &c., and on three or four occasions the police have been deputed to keep the peace, the former magistrate knowing the character of the parties. On the 2nd of January, intimation on the part of Nufoo Beebee was given to the police that an attack was expected, and a *burkundauz* was again deputed, and arrived two days before the occurrence, and reported that people were collecting, on which another *burkundauz* was sent, and the day after his arrival, early

1854. in the morning they were told No. 11's people were coming and soon saw a large body of men come towards Nufoo Beebee's house and on getting to it, forty or fifty men came out of it and the two parties in spite of them began to fight, when Dhon Gazee and Ainooddeen were severely wounded: the former is still in hospital, and the latter died there from the effect of his wounds. The burkundaues took the wounded men who had come out of Nufoo Beebee's house, into it, and afterwards to the thannah. They appear not to have seen Runjeet Doss struck, but as they were about to start for the thannah, they were told by the people that a man had been killed and carried off. The sessions judge sentenced Gungaram Singh and others to seven years' imprisonment and Zumeerooddeen Khan and Ikram Hosain to four years' each and 1000 Rs. fine in lieu of labor, convicting Gungaram Singh and others of affray with homicide and wounding, and the latter of being accessaries before and after the fact to the same, and although he disbelieved the evidence, that Zumeerooddeen Khan and Meer Ikram Hosain headed and led on their respective parties, which exclusive of the evidence for their defence he considered improbable from their station in life, and being then under recognizances of 1000 Rs. each, yet he considered that such an occurrence could not have occurred without their knowledge and direction, nor could a body of forty or fifty men be collected in Nufoo Beebee's house without their knowledge."

The prisoner appealed to the Nizamut Adawlut, and the Court on the 26th October, 1852, returned the case for further investigation as to which party was in *bona fide* possession at the time of affray. The proceedings were re-transmitted, after completion of the enquiry directed, and the Court on the 16th April last, affirmed the orders of this court.

The prisoner Mahomed Newaz now under trial was apprehended on the 18th October last, and committed on a charge of being concerned in the affray, the particulars of which are above detailed.

Witness No. 1, Sheikh Beesta,
2, Sheikh Mulfut,
4, Sheikh Doorgut,
7, Robeecoollah,
8, Sheikh Kalloo,
9, Womed Alec.

The witnesses for the prosecution, who have been examined in this court, are named in the margin, but their evidence is contradictory in material points and which renders it necessary to describe it briefly.

No. 1, in this court states that he saw the prisoner on an elephant ordering the assault from a distance of one *dak*, (or as far as the sound of a man's voice can reach in an open field, that is about 500 yards,) but could not say if any one else was with him, while in the foudjary he said that Ikram Hosain and Talib Hosain were on one elephant and Mahomed Newaz and Kalloo Khan on the other, and in the thannah that

he saw this from a distance of four *kanees* or about 200 yards. Witness No. 2, in his deposition before my predecessor in the first trial, stated that Ikram Hosain and Mahomed Newaz were on one elephant and Kalloo Khan and Talib Hosain on the other, while in the foudjary that Ikram Hosain and Talib Hosain were on one, and Mahomed Newaz, Kalloo Khan, and Jaboo Meeah on the other. Witness No. 4, a dependant of Nufoo Beebee, said before me that he saw the prisoner in the affray from a distance of about 225 *hâths*, while before the magistrate he said that he was only 60 *hâths* distance, and that Jaboo Meeah and Mahomed Newaz were on the elephant, while in the thannah that Kalloo Khan and Mahomed Moneer were on the elephant. Witness No. 7, Mahomed Newaz and Jaboo Meeah were on the elephant, while witness No. 8, in the thannah added that Mahomed Newaz and Ikram Hosain were on the elephant and ordered the attack. The burkundazes,* however, * Witness No. 23, Mahomed Fazil, who were deputed to prevent Witness No. 24, Safatoollah. the expected affray, stated that there were no elephants at all there, nor did they see the prisoner Mahomed Newaz among the assailants, and the darogah in his report of the 19th January, 1852, made no mention of the prisoner as being amongst those who were concerned in the affray.

The prisoner denied the charge and stated that he was charged from enmity by Zumeerooddeen Khan's party, and that ten or twelve days previous to the occurrence he went to Hapaneeah cutchery in the district of Tipperah, which is about three *puhurs* distance from the scene of action, and returned home the day after on hearing that the darogah had gone to their village. He named witnesses to the defence.

The law officer, discrediting the defence and the evidence in support of it, convicts the prisoner of the crime charged, considering the discrepancies in the evidence for the prosecution not material to the case.

It will be seen from the above history of the case, that the story of the two hostile parties being headed in person by Ikram Hosain, &c., on elephants was discredited by my predecessor, and equally improbable must be the fact that this prisoner, about sixty years' of age, should have been in the affray on an elephant; besides which the witnesses who have thus deposed were dependants of Nufoo Beebee or Zumeerooddeen Khan, and the discrepancies pointed out by me in paragraph five of this report are in my opinion fatal to a conviction. It must also be borne in mind that the darogah did not name the prisoner as being amongst the assailants, although he named his brother Mahomed Haneef; and the burkundazes who were deputed to prevent the affray did not then recognize the prisoner. Under the above circumstances, I cannot consent to convict him upon evidence so utterly worth-

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March 22.

Case of
MAHOMED
NEWAZ.

368 CASES IN THE NIZAMUT ADAWLUT.

1854. less, and dissenting from the *futwa*, would acquit him of the crime charged.

March 22. *Case of*
MAHOMED
NEWAZ. *Remarks by the Nizamut Adawlut.*—(Present: Sir Robert Barlow, Baronet.) The prisoner was named as one of a party concerned in an affray with homicide, in which sundry prisoners were sentenced in April last year. He was subsequently apprehended and committed on the same charge.

Some of the witnesses, who were examined at the former trial, were again examined before the sessions judge; their depositions were not however taken by the committing magistrate, nor was the prisoner confronted with them till they appeared at the sessions. This irregularity on the part of the magistrate has not been noticed. The sessions judge, in para. 5 of his letter of reference, alludes to the discrepancies apparent in the evidence of the witnesses whom he examined, and he grounds his acquittal of the prisoner upon the defective proof which is adduced against him. The prisoner's defence is *alibi* and he has cited numerous witnesses in its support. Bad as this evidence is, it certainly is not worse than that for the prosecution. Until however a *prima facie* case is made out against the prisoner, it is not necessary to scrutinize the evidence brought forward by the prisoner in his defence. I concur with the sessions judge and acquit the prisoner.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT.

versus

MANICK BAGDEE.

Hooghly,

1854. CRIME CHARGED.—Having belonged to a gang of dacoits. Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

March 22. Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 1st March, 1854.

Case of
MANICK BAG-
DEE. *Remarks by the officiating sessions judge.*—The prisoner was committed by the commissioner for the suppression of dacoity, upon the charge of having belonged to a gang of dacoits.

The prisoner was convicted of having belonged to a gang of dacoits.

The prisoner was named in the original confession made by the approver, Koylas Tantee, witness No. 1, as having belonged to the same gang, and having been associated with him in many dacoities. The prisoner confessed before the commissioner, to have been concerned in twenty-four dacoities; he pleaded guilty at the trial, and his confessions were corroborated by the testi-

mony of the witness, No. 1, Kylas, and proved to have been voluntarily given by the witnesses Nos. 2 and 3. 1854.

The charge being thus proved, I have the honor to recommend that a sentence of transportation for life, with labor in irons, be passed upon the prisoner. March 22.
Case of-
MAHOMED
NEWAZ.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) Concurring in the finding of the officiating sessions judge, I sentence the prisoner as proposed.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

MADHUB DOSS KYBURT.

Hooghly.

CRIME CHARGED.—Having belonged to a gang of dacoits. 1854.

Committing Officer.—Baboo Chunder Sekor Roy, deputy magistrate under the commissioner for the suppression of dacoity.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 1st March, 1854.

Remarks by the officiating sessions judge.—The prisoner Madhub Doss, No. 3, in the calendar, was committed by Baboo Chunder Sekor Roy, deputy magistrate under the commissioner for the suppression of dacoity, upon the charge of “having belonged to a gang of dacoits.”

He was named in the original confession of the approver Nimyc Nikarree, witness No. 1, who has repeated his previous statement, as to the prisoner having belonged to the same gang of dacoits, and having been frequently associated with him in dacoities, in his evidence both before the deputy magistrate and at the trial.

The prisoner Madhub Doss pleaded guilty, having previously made a full confession before the deputy magistrate in presence of the witnesses, Nos. 2 and 3, and declined to offer any defence.

Upon this evidence and confession, I convict the prisoner Madhub Doss, No. 3, of the charge, and recommend that he be sentenced to transportation for life with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I concur in the finding of the officiating sessions judge, and sentence the prisoner as proposed by him.

March 22.
Case of
MADHUB
DOSS KY-
BURT.

The prisoner was convicted of having belonged to a gang of dacoits.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND RADHANATH KOONDOO,

versus

24-Pergunnahs. BHOOTNATH CHATTERJEA ALIAS DOOKHEERAM
 1854. CHATTERJEA (No. 1.) MUDUN NAPEET (No. 2.)
 SEETARAM DUTT (No. 3.) AND ISSURCHUNDER
 BANERJEA (No. 4, APPELLANT.)

March 22.

Case of CRIME CHARGED.—1st count, prisoners Nos. 1 to 3, dacoity
 ISSUR CHUN- and plunder of property valued at Rs. 1,561; 2nd count, prisoner,
 DER BANER- No. 4, being an accessory before and after the fact, aiding and
 JEE (appel- abetting; 3rd count, prisoners Nos. 1 to 4, having in their pos-
 lant) and session part of the plundered property, knowing it to have been
 others. acquired by dacoity.

The prisoner CRIME ESTABLISHED.—Prisoners, Nos. 1 and 2, dacoity and
 in Government plunder, prisoner, No. 3, being privy to a dacoity, prisoner, No. 4,
 employ was being accessory both before and after the fact of dacoity, and
 convicted of receiving and having in his possession plundered property, know-
 engaging in da- ing it to have been acquired by dacoity.

Committing Officer.—Mr. J. R. Ward, officiating magistrate of Howrah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 21st December, 1853.

Remarks by the officiating additional sessions judge.—A dacoity was committed in the house of the prosecutor on the 4th November last. The robbers first broke into the lower apartment and then bursting open the door leading to the staircase, with a heavy log of wood, proceeded to the upper story, where the prosecutor and his family were sleeping. The former hid himself behind a wall on the terrace, constructed for private purposes, and sat on a beam jutting out from the building, but his alarm was so great, when the dacoits began the work of plunder upstairs, that he lost his footing and fell to the ground, from which he sustained considerable bodily injury. The dacoits were occupied nearly two hours in plundering the house, and carried off property, consisting of gold and silver ornaments, sovereigns and cash, to the amount of about 2,000 Rs. None of them were recognized, and no effort seems to have been made to confront or oppose them. The arrest of the prisoners was effected through the instrumentality of one Mudhee Mussalman, a notorious gang robber, who directed the attention of the police to the prisoner, Issurchunder Banerjee, and caused him to be apprehended and his house searched, in which was found a large quantity of the stolen articles. The prisoner is a writer in the Military Board Office,

and was seized in crossing the river on his way home after work. He disclaimed the ownership of the articles, when discovered, and admitted that they were plundered property, though the key of the chest, in which they were found, was in his possession at the time of the search, and made over by him to the police on requisition. The prisoners, Bhootnath Chatterjea and Seetaram Dutt, are domestics of the prisoner, Issurchunder Banerjea, and live entirely with him. It is impossible to believe that the plundered articles found in his house could have been conveyed there without their knowledge. Indeed, conjecture on the subject is unnecessary, as the prisoners Bhootnath Chatterjea and Mudun Napit, make an unreserved confession before the magistrate to having committed the dacoity in question, and deposited the property in Issurchunder's house, and the prisoner, Seetaram Dutt, a somewhat more qualified admission of having been cognizant of the affair, and remonstrated against its perpetration. The prisoner, Mudun Napit, was named by Bhootnath Chatterjea in his confession, and arrested in the town of Calcutta. The house in which he was taken was searched, and in it, immersed in a pot of water, was found a long cotton purse, containing five sovereigns, one gold mohur, and thirty-seven rupees in cash, and on his person Co.'s Rs. 6-12 annas in silver, all which he admitted to be part of the plundered property. The prisoner, Issurchunder Banerjea's confession before the magistrate, is an implied admission of a guilty knowledge of the dacoity, and receiving and holding in possession property plundered in, and acquired by, it. All the prisoners deny the charge before this court, and aver that their confessions before the magistrate were procured by unlawful means. The prisoner, Issurchunder Banerjea, pleads that he only kept his wife's jewels in the chest of which he gave up the key to the police, and was surprised to find when it was opened that these had been abstracted, and the stolen articles substituted in their place. None of the prisoners call witnesses, and I convict them as per column, No. 10. Besides the plundered property, arms of various kinds, such as are used by dacoits in their plundering excursions, were found in the house of the prisoner, Issurchunder Banerjea, and I strongly suspect he has long encouraged and profited by robbery, the respectability of his calling enabling him to do so with impunity, I am quite prepared to find that Mudhee Mussulman's revelations, should he make any, materially affect this individual. Mudhee has been arrested on approver's evidence, unconnected with the dacoity in question, and is at present in the custody of the commissioner for the suppression of dacoity.

Sentence passed by the lower court.—Prisoners, Nos. 1 and 2, to be imprisoned with labor and irons for (14) fourteen years in banishment; prisoner, No. 3, for seven (7) years; and prisoner, No. 4, for ten (10) years, with labor and irons.

1854.

March 22.

Case of
ISSUR CHUN-
DER BANER-
JEE (appel-
lant) and
others.

1854. *Remarks by the Nizamut Adawlut.*—(Present: Mr. B. J. Colvin.) Prisoner No. 4 has appealed. The finding of the

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Case of
ISSUR CHUN-
DER BANER-
JEE (appel-
lant) and
others.

property in his house is clearly established, and I concur with the sessions judge, that his confession before the magistrate is an admission of a guilty knowledge of the dacoity, and receiving and holding in possession property plundered in, and acquired by, it. I reject his appeal.

PRESENT:

A. DICK, Esq., *Judge, and*

B. J. COLVIN, Esq., *Officiating Judge.*

Tenasserim &
Martaban Pro-
vinces.

GOVERNMENT,

versus

NGA MHO (No. 1.) AND NGA PAY (No. 2.)

1854.

CRIME CHARGED.—Murder of Nga Muja on or about the 15th August, 1853.

March 24.

Case of
NGA MHO &
another.

Committing Officer.—Captain S. R. Tickell, magistrate of Amherst.

Tried before Colonel Sir A. Bogle, commissioner of the Tenasserim and Martaban provinces, on the 22nd February, 1854.

The Court con-
curred with
the commis-
sioner, in dis-
sent from the
jury, and con-
victed the pri-
soner on strong
circumstantial
evidence of
murder.

Remarks by the commissioner.—The jury who assisted in the trial, found the prisoners *not guilty*, but although the evidence against them is only circumstantial, I cannot concur in this verdict, but feel compelled to convict them, and having arrived at the conviction that they are both guilty, no alternative has been left me but to record a capital sentence against them; at the same time I conceive that a lesser punishment, with reference to the savage condition of the prisoners, may be found sufficient.

The first three witnesses Nga Sat, Nga Tsou and Nga Pinnya prove that the two prisoners were at the village of Paan, on the day of the murder, a fact which is proved by several other witnesses also, and that they were there engaged in gambling.

They likewise prove that neither of them were possessed of any thing; that deceased had about 30 Rs. or upwards, and that 1st prisoner, the night of the murder, appeared at the gambling board with about 30 Rs. and played high, and the dead body having been found next morning about a mile from Paan between Talya and Tounghthoo Paan, suspicion was at once raised that 1st prisoner Nga Mho had murdered and robbed him after dark, and then proceeded to gamble at Nga Pinnya's house with the money, of which the deceased was believed to be possessed,

all of which was from the time, the locality and every circumstance, a very probable matter.

The 4th witness, a female named Meekan, deposes that about sunset of the afternoon before his death, the deceased came to her house with two other men, one of whom she recognized to be the 1st prisoner; that she saw the deceased count his money amounting to about a handful of silver, and return it to his bag; after which all three went off in the direction of the place where deceased was next morning found killed.

This witness, a Kareen woman, gave her evidence with great clearness and precision, as did also the 12th and 13th witnesses, who corroborate each other's statement, and establish in the most conclusive manner, the important fact that the man with Nga Mho was the 2nd prisoner Nga Pay; the 13th witness also proves that Nga Mying had a red Kareen bag like the one before the court, which was suspended from his shoulder, and states that 1st and 2nd prisoners seemed to ply the deceased with liquor, while they rather held back themselves.

The 5th witness proves the fact of the deceased having been murdered between Talyu Paan and Thomeythor Paan, two villages about a mile apart, on the night in question, that is a few hours after he had been seen in company with the two prisoners, all of which is likewise proved by many other witnesses, and his bag was then gone. The head was nearly severed from the body by the stroke of a *dhao*, and Mee Boodoo the 10th witness proves that the 2nd prisoner lived in her house, that he took his meal there on the evening of the murder, left her house just before sunset and returned about 7 or 8 o'clock, that her husband had borrowed a *dhao* and had brought it home that afternoon and put it down near where 2nd prisoner was sitting, but the *dhao* has never been seen since. This witness also proves that Nga Mho, the 1st prisoner, came to her house that afternoon and asked for the deceased, saying he had promised to come and gamble with him that evening, and asked Nga Pay, 2nd prisoner if he had seen him; witness also saw Nga Mho go away, and Nga Pay follow him soon afterwards.

This evidence is very clearly confirmed by the 11th witness, who is husband to the above, who adds that when Nga Mho left his house he went towards the house of Mukan the 4th witness, that he saw Nga Mho, 1st prisoner, early next morning, that there was blood on his *dhotee*, that 2nd prisoner was in great distress and perturbation all that day, in consequence of which this witness suspected him and Nga Mho, of being the murderers.

As already observed the 12th and 13th witnesses entirely prove, that the 1st and 2nd prisoners and the deceased were drinking together, the evening of the murder, and they make the chain of evidence complete, up to within an hour or two of

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March 24.

Case of
Nga Mho &
another.

1854.

March 24.

Case of
NGA MHO &
another.

the murder, and the 14th witness confirms the foregoing and adds the very suspicious fact, that that very night and just at the time that 2nd prisoner returned to the house of Mee Boodoo, the 10th witness, where he lived, Nga Mho, the 1st prisoner came to her house and borrowed a *dhotee* (or *putso*) as his own was wet, and that next morning about day-light he and 2nd prisoner came and took away the wet *dhotee*, before she had thought of observing whether it was blood-stained or not.

The foregoing, added to the fact that the villagers at once suspected the prisoners of being the murderers, constitutes a considerable amount of circumstantial evidence, and on a comparison of the proceedings held before me and those taken before the magistrate, it will be seen that it bears a strong stamp of veracity, and that every little link on the chain is well connected.

But the most important evidence of all is that of the 6, 7 and 8 witnesses, the first of whom states that the 1st prisoner positively confessed to him that he had committed the murder, but without naming his accomplice, and the 2nd and 3rd, Nos. 7 and 8, depose that the 1st prisoner not merely confessed to them in the house of the 9th witness, that he had murdered the deceased Nga Mying, but stated that Nga Pay the 2nd prisoner had assisted him, and gave details which appear to be quite consistent with every probability.

The 9th witness was present when the confession was made, but could not understand it, being a Kareen, but he states the whole was interpreted to him by No. 7, and he corroborates the evidence of Nos. 7 and 8, who again corroborate each other in a very remarkable manner.

If the witnesses in this case resembled in character those who are so frequently brought forward in the courts of Bengal, it might be supposed that their statements had in some respects been carefully prepared, but they are all very simple and truthful, more particularly the female witnesses, and strange as is the very important testimony of Nos. 6, 7, 8 and 9, I can discover no ground for rejecting it, except the somewhat imperfect one that the witnesses are poor and that in common with most of their neighbours on the Salween frontier, they are given to drinking, gambling and smoking opium.

The prisoners Nga Mho and Nga Pay, deny the charge, but make no defence, and on mature consideration of all that has been adduced, I am of opinion that they are guilty of the murder of Nga Mying, and that they are amenable to the extreme penalty of the law; but for the reasons already recorded, I conceive that imprisonment for life in banishment, with hard labor in irons, would satisfy the ends of justice.

This case has afforded painful illustration of the very defective character of the police arrangements in this province, and the confused manner in which every stage of the mofussil enquiry was

carried on, and the imperfect details supplied by the police would in all possibility have resulted in the enquiry being altogether defeated, had not the magistrate, Captain S. R. Tickell, followed it up with becoming energy and perseverance.

Remarks by the Nizamut Adawlut.—(Present: Messrs. Dick and Colvin.) The circumstantial evidence against the prisoners is exceedingly strong and remarkably consistent. There is proof that the two prisoners and deceased were seen together, eight days before the gambling at *Paan* and the murder; that prisoner No. 1, Mho, was gambling in company with the deceased, the night before the murder; that on the evening of the murder both prisoners went away together with the deceased; that that very night prisoner No. 1, Mho, gambled high, and had more money than he ever was known before to possess; that deceased had money on his person which was not found with his corpse; that both prisoners were immediately after the murder observed to be in a perturbed state; that a *dhao* had been accidentally brought to the house where prisoner No. 2 lived, and laid down in the verandah, which the said prisoner noticed and that that *dao* was missing the night of the murder and never found, and the inquest proves that the fatal wound was inflicted apparently with a *dhao*. Lastly that prisoner No. 1, confessed, in a state of agitation, the murder before several persons; against the truth of whose depositions, prisoners have charged nothing. Further, in their defence, the prisoners have not been able to account satisfactorily for any one of the circumstances that tell so strongly against them.

The Court therefore, in concurrence with the commissioner, convict both prisoners, on violent presumption, of murder and sentence them, as recommended, to imprisonment for life in banishment with labor in irons.

The Court with pleasure observe that great praise is due to Captain Tickell, the magistrate, for the ability and exertion he has displayed in bringing the guilty to justice.

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Case of
Nga Mho &
another.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND ISSUR CHUNDER GHOSE,

versus

Backergunge. APPOO CALLING HIMSELF ABBAS ALLY (No. 1,) DAORI MIRDHA (No. 2, APPELLANT.)

1854. CRIME CHARGED.—Riot attended with the culpable homicide of Dhonye Kazee and the wounding of Radhanath Dutt and Rowshun.

March 24. Case of CRIME ESTABLISHED.—Riot attended with the culpable homicide of Dhonye Kazee and the wounding of Rowshun and Radhanath Dutt.

DAORI MIRDHA. (appellant) and another. Committing Officer.—Mr. W. M. Beaufort, magistrate of Backergunge.

Two prisoners convicted of riot attended with culpable homicide. Appeal rejected. Tried before Mr. C. Steer, sessions judge of Backergunge, on the 20th January, 1854.

Remarks by the sessions judge.—The riot, of which the prisoners are accused, occurred several years ago.* The case was originally tried at the sessions for July, 1852, and the following is an extract of the remarks of the judge upon it.

Issur Chunder Ghose the plaintiff in this case deposes, that he is a tuhseldar of Rajib Lochun Singh in Howla Rajnarain Singh Kismut Tafabaree, and that at the beginning of Pous last, his master Rajib Lochun and his nephew Radhanath Dutt and their servant Tuttick Paul came to the cutcherry and remained there. On the night of the 27th of that month, deponent and his servant Ram Raja Doss above named, with a traveller named Komul Chuckerbutty, were there together with Azmutoollah the owner of the house and Nowabooddin his nephew. That a little before dawn about 300 or 350 men, servants of Neelkunt Roy, armed with *soolfees*, spears, *dhawls* and shields were coming to attack the cutcherry, when deponent and the others left it and retreated to the house of Zumeerooddeen, where on account of there not being room for them in the cutcherry, four peadahs of Rajib Lochun named Zameerooddeen, Dhonye Kazee, Rowshun and Kokye Mullick were lodged. That the rioters not finding them in the cutcherry, after a short interval, came on to the house of Zumeerooddeen crying out, Ali, Ali, Kali, Kali, and called out that it was the order of Neelkunt Roy that they should seize and carry off Rajib Lochun Singh. The peadahs, behind whom the deponent and his master remained, replied that he was not there, when Lal Mohamed No. 2, struck Dhonye a blow on the head and Warish No. 1, struck a *soolfee* into his belly above the navel and he fell on the ground. The rioters then

struck Rowshun with *soolfees* on the left side of the nose and on the shoulder and on the thigh and he also fell. On seeing this, plaintiff ran off to give intelligence at the thannah, where he arrived in the afternoon and gave his deposition before the darogah, and on the next day returned to the place with the jemadar. Radhanath Dutt and Rowshun were brought on that day also from the cutcherry of the talookdar of Aruz Begee, by the jemadar. Radhanath Dutt had a wound on his forehead and on the calf of his left leg.

The prisoner Appoo has been identified at the sessions by ten witnesses, viz. by No. 1, Uzmutoollah, No. 2, Kalam Gazee, No. 3, Radhanath Dutt, No. 4, Dhun Gazee, No. 5, Manick Manjee, No. 6, Chamaroo, No. 8, Dhun Gazee 2nd, No. 9, Mamoodin, No. 10, Mungul Khan, and No. 11, Zumeerooddeen, as the person whom they know by the name of Appoo, and against whom they formerly gave evidence. Of these, Nos. 1, 2, 5, 6, 8, 9, 10 and 11 named the prisoner both before the police and before the magistrate.

The prisoner Daori has been recognised by ten witnesses at the sessions, viz. by Nos. 1, 2, 3, 5, 6, 8, 9, 10 and 11, above named and No. 12, Dowlut, of whom Nos. 5, 6, 8, 9, 11 and 12, named the prisoner both before the police and the magistrate.

The defence of Appoo was that his name is not Appoo but Abbass, and that he had nothing to do with the riot, and that he was ill at his own house on the day of occurrence.

Daori too rested his defence upon an *alibi*.

Two of the jury convicted both the prisoners, the third had doubts of the identity of Appoo and acquitted him. I coincided with the majority and convicted both the prisoners in disregard of the evidence to their *alibi*.

I don't doubt that the prisoner's name may be Abbass. Under that name he most likely has, and does conduct his business, but men of the prisoner's class commonly go by two names and the common name is generally not the most proper one. The prisoner being able to show that as Abbass he has been appointed a deputy Kazee, and that as Abbass he has been publicly sued, is no evidence that he has not been known to the identifying witnesses as Appoo jemadar. The identity and guilt of the prisoner, be he Abbass or be he Appoo, is clearly established by direct evidence of eye-witnesses, upon whose testimony the Court has sentenced many other persons formerly tried upon the same charge. They speak positively and without the slightest doubt, as to their knowledge of the prisoner and of his identity with the person, whom they formerly called Appoo. To declare that the prisoner is not Appoo, is to hold these persons guilty of wilful falsehood. I can see no motive which would induce them to recognise the prisoner as Appoo, were he really a different person. No attempt has been made to show who Appoo was, if

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other.

1854. he is not the prisoner, and he can be no mean person either, for if the witnesses have perjured themselves in falsely recognising the prisoner, such a result could only have been procured by the weight of the purse of the proper Appoo. The prisoner is a deputy Kazee and possesses golahs, and it is more likely that if the witnesses were open to a bribe, that they would have been bought over by him than that having been bought over by another person of the same name, the prisoner should be unable to say who this Appoo was, who had been able to exercise such an unfair influence to his prejudice over the witnesses.

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DAORI MIR-
DHA (appel-
lant) and an-
other.

Sentence passed by the lower court.—Each to be imprisoned for (6) six years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoner in his appeal alleges that the real Daori was apprehended and released by the darogah, that he was then taken up and substituted for the real culprit of the same name, and failing to pay a bribe of 300 Rs., demanded by the darogah, was sent in to stand his trial. Nothing of this is stated in his defence at the sessions, he only denied being the real Daori and cited witnesses to prove an *alibi*; this and his other assertion were disbelieved by the sessions judge, in the face of the direct and positive evidence of the prosecution to his identity and presence at the riot. I see no reason to interfere with the order and sentence passed upon him, and reject this appeal.

PRESENT:

H. T. RAIKES, Esq., Judge.

GOVERNMENT AND BEERBUL NAIK TELEE,

versus

Beerbhoom.

DEENOO HAREE CHOWKEEDAR.

1854. CRIME CHARGED.—1st count, being an accessory after the fact of the dacoity attended with wounding, committed in the house of Beerbul Naik, plaintiff, from whence property valued at Rs. 76-6 was plundered; 2nd count, knowingly receiving property acquired by committing the abovementioned dacoity.

March 24. CRIME ESTABLISHED.—Being an accessory to dacoity after the fact.

Case of DEENOO HAREE CHOWKEEDAR.

Committing Officer.—Mr. H. Rose, officiating magistrate of Beerbhoom.

Prisoner convicted as an accessory to dacoity after the fact and sentenced to

Tried before Mr. W. Taylor, officiating sessions judge of Beerbhoom, on the 20th January, 1854.

Remarks by the officiating sessions judge.—The prisoner, Deenoo Haree Chowkeedar, was tried on the 18th, 19th and 20th,

of January for being accessary after the fact to a dacoity committed in the house of Beerbul Naik Teelee, son of Kess Hooree Naik.

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Case of
DEENOO HAN-
NAH Chowkeed-
dar.

The plaintiff in this case is a Teelee, aged fifty-five years, keeping a shop in the mouzah Ringoo Chungoo, thannah Sahana. On or about the 26th of Aghun at 10 P. M., the plaintiff, according to his statement, was asleep, and was awoken up by being deprived of his *dhotee* by a number of men (who had entered the apartment) with which they bound him; he was beat with bamboos and his face and hair burnt by a *mussal*. Chundoo his servant, was sleeping in the same apartment, and was likewise assaulted and dragged from the house. The dacoits then forced open two out-houses, one on the north side of the premises, and the other on the west, and plundered the whole property in them, and left the premises. The prisoner, the plaintiff states, is his servant, he saw him a short time before he (plaintiff) retired to rest, the prisoner with one Rungoon Chowkeedar of Ringoo Chungoo was in the stable, adjoining the house, he (plaintiff) was sleeping in. The property found near the house of prisoner, plaintiff recognizes as his, and was in one of the houses plundered by the dacoits; he suspected the prisoner in consequence of his absenting himself, when the dacoits decamped, and also from the circumstance of the sword and cotton, his property, being found by the police on the premises of prisoner.

ten years' im-
prisonment by
the sessions
judge.

In appeal
conviction al-
tered to receiv-
ing stolen pro-
perty and sen-
tence reduced
to five years'
imprisonment.

The prisoner in defence denies all participation in the dacoity, pleads he was assaulted by the dacoits, in like manner with the other servants of his master; he gives no reason for his departing at the same time the dacoits left, and claims the property found, belonging to plaintiff, as his own. The cotton he states, as having purchased in the month of Kartick at a *hât*, for the purpose of having it made into cloth, and the sword as having been the property of a brother since dead; that he concealed the goods under ground for security, he being, in his capacity of a Chowkeedar, obliged to be frequently at the thannah, and having no one to take care of his property on these occasions, his wife being very old, and his son too young. He corroborates the whole circumstances of the dacoity as evidenced by the witnesses.

My opinion on this case is as follows. 1st. There is not the slightest doubt that a daring dacoity was committed on the premises of the plaintiff, Beerbul Naik, and that he was wounded with other parties, and robbed of considerable property. 2nd. That evidence in this case is conclusive, and that a certain portion of the stolen property was found in the premises of the prisoner, who does not deny possession. 3rd. The circumstantial evidence is clear that the prisoner quitted the house of his master immediately on the departure of the robbers, and did not make his appearance until brought by the police. 4th. The story of the prisoner how he became possessed of, and his reason

1854. for concealing the property in a place where the offal of his house was thrown, is under all the circumstances improbable, and unworthy of credit. The crime committed by prisoner is aggravated by his being a chowkeedar, and at the same time a servant in the employ of plaintiff some years, consequently I consider that he should be visited with more severity than if he had been a stranger. He is convicted of the crime, and sentenced to ten years' imprisonment with chains and labor.

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Case of
DEENOO HAREE
Chowkeedar.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) I do not see upon what grounds the sessions judge has convicted this prisoner of accessoryship after the fact. He was the prosecutor's servant, at the time of the robbery, and was in his house when the robbery was committed; subsequently he was suspected, as the dacoits had not ill-used him, as they did the other inmates, and on searching his house, a sword and some cotton thread, sworn to by the prosecutor and his witnesses, were found. These, the prisoner claimed as his own, but could not prove his ownership. I would convict of receiving the stolen property and sentence him to five years' imprisonment with labor and irons.

PRESENT :

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

Behar.

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GOVERNMENT,

versus

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Case of
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KAETH and
another.

OODUNLALL KAETH (No. 2,) AND SHEODIAL SINGH
BABHUN (No. 3.)

CRIME CHARGED.—Prisoner, No. 2, 1stly on a charge of preferring a false complaint against Alumchund, Hemnarain, Suddoo, and Fuqera; 2ndly perjury, in having on the 7th November, 1853, deposed under a solemn declaration taken instead of an oath before the officiating magistrate of Behar, that Hemnarain sold 2 annas, 13 dams, 6 cowries, 13 bowries, more or less, being the proprietary right and *mokurruree* of the entire 16 annas of mouzah Doomree with the hamlets appertaining thereto, uslee with Dakhlee in Pergunnah Mohair and 4 annas Milkeut Mokurruree of mouzah Muhsala *alias* Burhooreea in Pergunnah Mohair with the right of mesne profits due from Suddoo and Fuqera, sons and heirs of Summun Kahar, farmer of the share of the said village to Sheodial Singh, my client, in consideration of the sum of Co.'s Rs. 1,975. The seller on receipt of the whole amount of sale proceeds, executed a deed of sale, which after being

The prisoners were acquitted, as it did not appear wherein the perjury charged against them lay, and no sufficient proof adduced to establish any one point in the depositions of the parties charged.

signed by himself and his witnesses, he had the same duly registered, and delivered to Sheodial Singh, the purchaser. In the meantime the civil court being closed, I and Baboo Sheodial Singh went to our respective houses. Five days of Kartick had elapsed, Baboo Sheodial Singh came with the document executed by Hemnarain seller and a *waseel bagee* of the amount sale proceeds, and told me that as the civil court will now soon be opened, you take the deed of sale with you to Sahebgunge and get a draft of a petition, regarding the mesne profits and for the recovery of possession, prepared, and when the civil court opens, I will come with the value of the paper and fee, &c. Upon this, I kept the two papers, the deed and *waseel bagee* of sale proceeds, and gave the said Baboo leave to go. I proceeded to Sahebgunge with four documents, viz. the aforesaid two documents, a deed of sale of the share of mouzah Ruchoondha, purgunnah Mahair, executed by Byjoolall and the said Hemnarain in the name of Poorun Singh, purchaser, my elder brother (as I had to institute a suit in the civil court for the mutation of the estates) and a bond executed in the name of Poorun Singh by one Choolhun Rujwar, bond slave, who had absconded. On arriving at the lodging of Ramkishunloll, pleader, at noon, I saw Ramkishunloll, to whom I made over the papers in the presence of three persons, viz. Shunker Singh, Jeeun Singh and Oogur Singh and told him keep them in deposit, I will take them back from you after *deyvalee* holidays. On the 16th Kartick, Tuesday, at two hours after dawn, I went to the lodging of Ramkishunloll, vakeel, and demanded the document from him, who said that you sent for them and received them back. I replied that I never sent for the document. Upon this, he shewed me a note, purporting to have been written by me. On reading the note, I recognized it to be the hand writing of Alumchund, who is a servant and attorney of Fugeera and Suddoo, against whom I determined to institute an action for mesne profits. I became anxious and said to the aforesaid pleader that I demand the document from you. Upon this, the said vakeel appointed two men to accompany me. I and the pleader's two men searched for Alumchund in his own lodging and throughout Sahebgunge, but could not find him, whereupon I, Puhul Singh and Ramdial Kahar at once proceeded to mouzah Kishenpore to the house of Alumchund, but did not meet him, when we then returned to Maunpore. On meeting with Alumchund in the house of Bahorunloll, I asked him if he had brought my papers from Ramkishunloll, vakeel, who acknowledged having brought the papers and said that I will give them to you. Upon this, I demanded them, who replied, come to Sahebgunge, when I, Alumchund, Gundowreeloll, Durbareeloll, Puhul Singh and Ramdial Kahar went to Sahebgunge. On arriving in the bazar or mart of Rumna, Alumchund ran and entered the house of Fugeera Kahar, we

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1854. waited for him in that place till evening, but he did not come out, I waited for him there several days, but did not meet him. March 24. In despair I preferred my complaint before you against the Case of fraudulent proceeding of Alumchund, Hemnarain, seller, Suddoo and Fuqeera. The above mentioned fraud was committed by Hemnarain, Suddoo and Fuqeera. On being interrogated, as to who conveyed the note, which was addressed by Alumchund to the vakeel, replied that the vakeel said that Alumchund himself had brought it. Such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

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Prisoner, No. 3, perjury in having, on the 29th November, 1853, deposed under a solemn declaration taken instead of an oath before the officiating magistrate of Behar, that on the 2nd date of Assin of this year, Hemnarain executed a deed of sale of his own share in mouzah Doomree Burhooreea with the right of mesne profits due from Suddoo and Fuqeera for Rs. 1,975, and that I have paid up the amount sale proceeds thereof. Hemnarain also executed a power of attorney in the name of Oodunloll mokhtear (who is my servant) for the purpose of getting the document registered by the register of deeds. The seller Hemnarain making a stipulation in the power of attorney that the mokhtear, after getting the deed registered, should make it over to the purchaser. Afterwards Oodunloll got it registered by the register of deeds and then gave it to me in the presence of Hemnarain seller. When the offices were closed, I went home. A few days previous to the offices opening, I went to Kishunpore in the house of Oodunloll, to whom I made over the deed, and desired him to proceed to Sahebgunge, and prepare a draft of a plaint for the amount of mesne profits. That I should proceed with the fee of paper, &c., after the cutcherry opened, when I, in the month of Kartick, on Saturday at one *puhur*, or a fourth part of the forenoon, arrived at Sahebgunge and met with Oodunloll. I asked him, if the draft had been prepared or not. Upon this, he said that I placed the deed with Ramkishunloll, vakeel, from whom Alumchund had taken it, by writing him a *roquah* or note in my name. Upon this, Oodunloll said that I am going to present a petition to the magistrate, you give notice to the judge as he would that day get the 2nd deed registered by the register. In accordance to the instruction of Oodunloll, I presented a petition to that effect to the judge; and again in having, on the 2nd December, 1853, deposed under solemn declaration taken instead of an oath before the officiating magistrate of Behar, on being questioned by the latter authority, as to whom he, Oodunloll, meant, when he stated that he would get the deed registered that day, replied, the Moosulman of Burhooreea has purchased and that Hemnarain seller was going to acknowledge the same before the register of deeds.

Question. Did you at once pay up Rs. 1,975 to Hemnarain seller. *Replied,* Yes, I paid him at once at my lodging in Saheb-gunge in the presence of Juddoo Singh, Rewa Singh, Hemnath Roy and Chutroo Muhtoo, Ramdial Kahar, Rungloll Singh and Chokhun Singh were also present there. I paid it on the 2nd day of Assin, at one *pukur*, or a fourth part of the day after noon, and on the 3rd, the deed was registered, on that day, Oodunloll made the deed over to me after it was registered in the presence of Hemnarain seller. *Question.* You say that Oodunloll is your attorney and servant, and his name is recorded, as a witness in the deed, which was executed in the name of Ukhul Khan, Khyran Khan, Ruhman Khan and Bellun Khan, you are therefore asked how it was that, if he was attorney and servant and wrote the first deed, which was executed in your name, he signed his name as a witness in another deed? *Replied* that I do not know whether Oodunloll has signed his name, as a witness in the 2nd deed or not, Oodunloll knows. Such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer.—Mr. A. G. Wilson, deputy magistrate with full powers of magistrate, Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 16th February, 1854.

Remarks by the sessions judge.—Oodunloll, No. 2, was employed as a mokhtear or agent by Hemnarain Singh, witness 4, to effect the sale of his proprietary shares in the villages of Doomree and Muhusala, alias Burhurea, together with mesne profits due from Suddoo and Fuqeera, heirs of Sumun Khan, farmer, which he did to the other prisoner, Sheodial Singh, under a deed of sale, registered by Oodunloll, before the Register of deeds, under authority of a power of attorney from the witness, Hemnarain, to that effect.

On 5th November following, Oodunloll complained to the officiating magistrate, that having been employed by Sheodial Singh to recover the monies due under the deed of sale, he had lodged it, together with other documents, with Ramkishunloll, vakeel, at Gya, and on enquiring for them after the holidays, he was astonished to learn, that they had been taken

Ramkishunloll's evidence before officiating magistrate on 16th November, No. 16, and who also filed the note referred to No. 63.

away by his nephew, Alumchund, witness No. 5, under a note, purporting to have been written by himself. He charged Hemnarain with having fraudulently obtained possession of this document through Alumchund, in collusion with Suddoo and Fuqeera. He

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1854. confirmed this complaint on oath before the officiating magistrate on 7th idem, and stated that he had informed his employer, Sheodial Singh, who had petitioned the civil court, regarding it, as acknowledged by Sheodial himself, and confirmed by his petition to the civil court of the same date, viz. the 5th of November last, in which Sheodial Singh also added, that Hemnarain was about to execute a fresh deed of sale to Ukkul Khan, which he prayed might be impounded if presented. Sheodial Singh deposed before the officiating magistrate, on 29th November following, in support of Oodunloll's complaint, and also to his having paid the purchase money in full under the deed of sale.

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Alumchund (No. 5,) was put on his defence to this accusation, on 17th November last, but was eventually acquitted by the magistrate's proceedings of 17th December following, by which date the following circumstances had come to light.

Wit. No.

- " 4, Hemnarain.
- 5, Alumchund.
- 7, Shunkur Singh.
- 8, Beharee Singh.
- 9, Kishenram.
- 10, Ukkul Khan.
- 11, Tofehlall.
- 12, Sudanund.

Copy deed of sale to Ukkul Khan taken from the Kazee's register No. 68, dated 27th Oct. 1853.

After the registry of the deed of sale to Sheodial Singh, the purchase money not being forthcoming, Hemnarain directed Oodunloll to procure another purchaser, which he did in Ukkul Khan, (Witness No. 10,) and others, and in whose name a deed of sale was written out by Alumchund. Oodunloll himself was one of its attesting witnesses, and the writer of one of the other witnesses' signature to it. He was also present at its registry by the Kazee on 20th October last. Oodunloll, as the man of business, retained the documents, but after two days, the purchase money being forthcoming by Ukkul Khan, thus again subsequent to the registry, and the documents being required from Oodunloll, he put off giving them up. On Hemnarain's seeking the intervention of Hossein Bux Sahab, Oodunloll set up various pretences, and appears to have been kept in some duress, during which, he got away, complained at the thannah, and was immediately followed by Hem-

- Wit. No. 4, Hemnarain Singh.
- Wit. No. 5, Alumchund.
- Wit. No. 6, Mahadeo Lall.
- Gobind Koornee before magistrate, No. 38, 29th Nov. 1853.
- Gheyrā Deysh, ditto No. 30.
- Ditto.

Extract from thannah Diary of 30th October, 1853.

the documents were obtained from Ramkishunlall, Vakeel, under the note from Oodunloll delivered by Alumchund, and made over to Hemnarain, who, writing an

- Wit. No. 4, Hemnarain.
- " " 5, Alumchund.
- " " 6, Mahadeolall.

Wit. No. 7, Shunkerlall.
 " " 8, Beharee Singh.
 " " 9, Kishenram.
 " " 10, Ukkul Khan.

endorsement in the Persian character on the deed of sale to Sheodial Singh, and acknowledged by him before this court, to the effect, that it was

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null and void, through nonpayment of its purchase money, made it over to the second purchaser, Ukkul Khan, together with his own deed of sale. The former of which, as above shown, was produced by Ukkul Khan in the magistrate's court, on 2nd December last, and the latter filed by him in the collector's office, for the purpose of mutation of names.

Two of the attesting witnesses to the deed of sale to Sheodial

Wit. No. 13, Chumputlall.

Wit. No. 14, Gujadhur Pershad.

Singh, respectable persons depose to their having witnessed it at Hemnarin's request, but knew nothing

about its registry, or the payment of its purchase money.

Both prisoners plead *not guilty* and abide by their original statement, of the deed of sale to Sheodial Singh having been duly registered and completed. Oodunloll called witnesses, Nos. 15 to 20, 17, being absent. The two first deposed to an improbable story of Alumchund's having written the note in Oodunloll's name to Ramkishenloll, vakeel, under which the documents were delivered to Alumchund, and the others either to Oodunloll's having delivered them to Ramkishenloll with injunctions to give them up to no one, which is at variance to the vakeel's own statement, or to Alumchund's having procured them. The two latter facts, under different colorings, stand acknowledged on both sides. Sheodial Singh called witnesses, Nos. 22 to 26; Two of whom Ramdial Kahar, No. 24, and Rungloll, No. 26, are attesting witnesses to the deed of sale to Sheodial Singh, and deposed to its full execution by payment of the purchase money.

The *futwa* of the law officer, dwelling on the authenticity of the registry, and the validity of the deed of sale to Sheodial Singh, acquits both prisoners.

If the truth is to be inquired after in this prosecution, it must be looked for, independent of the formal swearing to, and conditions of, the document at the time of registry, when it purported in the most positive language, that the deed of sale to Sheodial Singh had become positive by payment of its purchase money in full. Two witnesses only, out of its eight attesting witnesses, formally swore to it before the register of deeds, and both came before this court. Mohadeololl, No. 6, deposing on behalf of the prosecution and Ramdial Kahar, No. 24, on that of the defence. The prosecution against the prisoners for perjury thus opens with counter-perjury as on record of a formal character, aggravated by the repetition of direct perjury before this court by one, if not by both these two witnesses. Thus technically considered only, the law officer's view, under such

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circumstances, may be the correct one, but after much consideration, I can come to no other conclusion, than that the case is an exceptional one, under all its marked features, demanding a broader view to be taken of it, in satisfaction of the ends of justice. The prosecution is not at Hemnarain's instance, so as to be open to objection from any conduct on his part, but, at the magistrate's instance, seeking to punish the prisoners for attempting to turn his court to their own base purposes by maliciously accusing others of feloniously possessing the document, for which Alumchund was put on his trial. Though it cannot excuse such lax practices, and weak moral perceptions, yet it is notorious, that a practice very widely prevails of entering conditions in documents, purporting to their execution in full, and of their being registered and sworn to accordingly, purchasers being unwilling to conclude their negotiations before such form has been gone through whilst the seller looks to his possession of the document itself, as Hemnarain did in the present instance, though his agent, Oodunloll, as retaining it in pledge, until actual execution prior to final delivery shall have taken place, followed by application for mutation of names in the collector's office. The deed of sale to Ukkul Khan contains the very same conditions, and in the case of Gunouree Panday, brought forward by Sheodial Singh himself, and details of which are in the Rooceedad, it is in proof, that a similar document was actually retained in deposit in the register of deed's office for upwards of one year subsequent to registry in due form, and then is said to have been eventually smuggled out of the register of deed's office. Such practices may be worse than bad, needing reform, and positive prohibition, but as existing, beyond doubt, I have only to view them in connection with the actual merits of the case under trial, which for the foregoing reasons, I regard as open to consideration.

The prisoners' accounts of themselves are utterly inconsistent. That Oodunloll was Hemnarain's agent is fully acknowledged, but what made him Sheodial Singh's, rests on improbable allegations. Sheodial Singh styles Oodunloll his servant and inokhtear, or attorney, but no attempt even has been made to shew that he acted under authority of any power of attorney from Sheodial Singh, or what peculiar circumstances existed between them, which could have thus induced the purchaser, Sheodial, to leave his title deed so completely in the hands of Oodunloll, the seller's attorney. The avowed retention of the document by Oodunloll for the purpose of a suit against Suddoo and Fuqeera is just as fictitious. Ramkishunloll vakeel's de-

position before the magistrate does not support it, but the very contrary. He deposed "that on 13th Kartick, 29th October last, Oodunloll brought the documents to him for safe custody, as his

own house was unsettled. '*hulchul*' and on 15th following, or 31st October, they were made over to Oodunloll's nephew, Alumchund, under the former's note." Sheodial Singh told the magistrate "he did not know why Oodunloll had placed them with Ramkishunloll, vakeel, whether to be copied, or deposited," and before this court, he merely said that he did not know with what intention, "*Kis mutlub se*," Oodunloll had left them with this vakeel.

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Memorandum of dates of occurrences.

Original deed of sale to Sheodial Singh, 19th September, 1853, made over to Ramkishunloll Vakeel by Oodunloll on 13th Kartick, 29th October, 1853, and brought back by Alumchund on 15th Kartick, 31st October, 1853.

Extract from thannah diary of 30th October, 1853, deed of sale to Ukkul Khan, 27th October, 1853, registered before Kazee on 28th idem, Oodunloll's complaint to the magistrate, 5th November, 1853.

Sheodial Singh ditto civil court ditto.

It will be seen within how singularly dates tally with the circumstances of the case, as narrated by the witnesses for the prosecution. Oodunloll is silent also regarding his complaint at the thannah of 30th October last, which by its particulars, so completely corroborates all that had thus previously happened, and is so thoroughly consonant with all that followed, as to place the truth of the occurrences narrated by the witnesses for

the prosecution beyond doubt, for originating as the prosecution did, it is quite impossible, any such occurrences could either have been fabricated, or tampered with by any one. Sheodial Singh is an able-bodied, intelligent-looking person, between twenty to thirty years of age. Before this court, he pretended, for the first time, that he was an inexperienced youth, and that Oodunloll presuming on his credulity, had retained possession of his title deed, and then became a party, as who could answer for his honesty with Hemnarain and Alumchund to the sale to Ukkul Khan. He himself was worth lacs of rupees, what object could he have had to act falsely in such a trifling transaction? His perseverance in supporting Oodunloll throughout, whether in petitioning the civil court, opposing the mutation to Ukkul Khan in the collectorate, or his depositions before the officiating magistrate of 29th November, and 2nd December last, prove him to be any thing but an inexperienced youth, and that persons of property thus lend themselves to the rascalities of pettifogging attornies, like Oodunloll, in the present state of native society, is a matter of almost daily occurrence. Lastly I look in vain for any substantial proof that Sheodial Singh actually did pay the purchase money. His own account of it before the officiating magistrate, on 2nd December last, is in itself a most inconsistent one, and I regard the testimony of the two attesting witnesses to the deed produced by him before this court, viz. Ramdial Kahar, witness No. 24, and Rungloll, witness No. 26,

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as that of two low creatures, the former his servant, tutored for the occasion, at variance to that of their co-witnesses, more respectable persons, Chumputloll, witness No. 13, and Gujadhur Pershad, witness No. 14, and palpably false as opposed to all that has happened, and been brought to light in the course of this trial.

At the close of the trial before this court, Sheodial Singh charged Hemnarain Singh with having been heretofore concerned in transactions of a similar fraudulent character, as that of which he accused him in the present trial. The records pointed out by him concerning one Gunowree Panday were called for from the magistrate's and register of deeds' offices, and certainly exposed transactions of a like nature; though in the undigested state of the record, it is difficult to say to which side attaching. Hemnarain Singh is in no ways ostensibly concerned in these records, and is only once incidentally named in one of the opposite party's petitions. Hemnarain's explanation of the matter is, that Oodunloll's share in Juggernathpore, Hemnarain's place of residence, was sold by Oodunloll to Gunowree Panday, who also bought his, Hemnarain's, share from the mortgagees, to whom it had foreclosed, but he was unable, or unwilling to support this statement by any documentary proof. Still it may be the true explanation, since the prisoners do not trouble themselves to disprove it, as they ought to have been able to do, had it been false. But even if there had been good grounds for attaching any such stigma to Hemnarain Singh, it might have held good in the weighing his testimony with the greatest caution, though not for rejecting it, when otherwise unquestionably corroborated, as I find to be the case, in the present trial.

Resulting so worthlessly as I find the prisoner's defences, I can only regard the main facts for the prosecution as indisputably established, and as fully and truthfully accounting for Ukkul Khan's possession of Sheodial Singh's original deed of sale and the resale to Ukkul Khan, proving the falsehood of the depositions for which Oodunloll and Sheodial Singh now stand arraigned. I convict both prisoners of the perjuries charged, and considering that they have been perseveringly taken in furtherance of the ends of cheating and fraud by both, and gross breach of trust by Oodunloll, I would yet sentence Sheodial Singh, as the employer, and Oodunloll, as the base tool, alike, being unable to distinguish any difference in their degrees of guilt respectively, I would sentence each to five years' imprisonment in labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick, and Mr. B. J. Colvin.) We remark that the 1st charge against the prisoner No. 2, forms no ground of commitment. The magistrate should have disposed of it himself under Section 5, Regulation VII. 1811.

The perjuries charged are contained in two long depositions,

in which are detailed narratives of various occurrences extending over a considerable period of time. It is not stated what portion is true, and what portion not, nor which are the particular circumstances that are falsely deposed to. The only allegations in the deposition of Oodunloll capable of disproof, sufficient to sustain a charge of perjury, are 1st that of his nephew, Alumchund, having forged his signature, and written a note in his name to the pleader, Ramkishunloll, and thus obtained from him the documents, which he, Oodunloll, had deposited with the pleader; 2nd his denial of his being a subscribing witness to the deed of sale. The falsity of these allegations have been by no means so satisfactorily proved as to warrant a conviction; or as indeed they might easily have been, if really untrue.

With respect to the prisoner, Sheodial Singh, there is not a particle of evidence to convict him of perjury. The evidence against the payment of the purchase money by him, is counterbalanced by evidence in favor of its due payment.

The sessions judge admits that direct and positive proof of perjury does not exist, and that the view of the law officer may be technically the correct one. The question therefore resolves itself into one of credibility of evidence; but disbelief of testimony merely warrants its rejection, not that the deponent should be tried for perjury. We acquit both prisoners and direct their release.

PRESENT:

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT,

versus

HURRUCK DOSAD.

CRIME CHARGED.—Culpable homicide of Damree Dhome.

CRIME ESTABLISHED.—Accomplice in the culpable homicide of Damree Dhome.

Committing Officer.—Mr. W. F. Macdonell, assistant magistrate of Sarun with full powers of a joint-magistrate.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 10th January, 1854.

Remarks by the sessions judge.—This is a case of thief-killing in which the prisoner is shewn to have taken part. It appears that during the time of a fair at Godnah, a thief, who had been trying to steal some thing from the Raja's house in the village, was caught, when trying to make off, and was so severely beaten by the prisoner and some other parties that he died from the in-

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Case of
HURRUCK
DOSAD.

Prisoner convicted as an accomplice in the culpable homicide of a thief sentenced to two years' imprisonment. Appeal rejected.

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Case of
HURBUCK
DOSAD.

juries received. On his trial, the prisoner states that the man was killed by other parties who had got round him, and that he himself had gone off after some of his companions, but he admitted in the earlier stages of the case that he had beaten him, and indeed there is evidence to show that he did this, and as the act is proved to have been quite unjustifiable, I have in concurrence with the '*futwa*' which convicts and makes him liable by '*tazeer*,' sentenced him as noted in the proper column.

Sentence passed by the lower court.—Two (2) years' imprisonment, and a fine of twenty-five (25) Rs., or in default of payment to labor..

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoner in his appeal has reiterated the defence he set up at the sessions, namely, that he did not strike the deceased, and on his return from the thannah found him in a dying state.

The medical witness describes the injuries as very severe, the ribs on both sides being broken and the liver and spleen ruptured and suffused.

I consider all those engaged in illtreating the deceased must be regarded as acting in concert, with the object of punishing the thief, and as their violence was both uncalled for and illegal, they must one and all be held responsible for the consequences of their acts. As the prisoner is proved to have been one of those engaged in the maltreatment, to which the death of the deceased is clearly attributable, I think he has been rightly convicted of being an accomplice in culpable homicide, and I see no reason to interfere with the sentence passed upon him.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT,

versus

MANICK MAHATA (No. 1,) HEERA GOWALA (No. 2.)

Beerbhoom.

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CRIME CHARGED.—Highway robbery attended with beating Gopeenath and others, and slightly wounding the said Gopeenath, and theft of property valued at Rs. 30-9-5.

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CRIME ESTABLISHED.—Highway robbery attended with beating Gopeenath and others, and slightly wounding the said Gopeenath, and theft of property valued at Rs. 30-9-5.

Case of
MANICK MA-
HATA and au-
other.

Committing Officer.—Mr. H. Rose, officiating magistrate of Beerbhoom.

Tried before Mr. W. Taylor, officiating sessions judge of Beerbhoom, on the 14th January, 1854.

Two prison-
ers convicted
of highway
robbery with
wounding and
sentenced to
twelve years'
imprisonment.
Appeal reject-
ed.

Remarks by the officiating sessions judge.—The prisoners were tried for stopping on the highway one Gopeenath Mudduck and three females, his relatives, Mussumut Doorga Myranee, Suboodra and Byndia Myrance, and after assaulting two of the party, robbed them of property to the value of Co.'s Rs. 30-9-5.

From the evidence of the plaintiffs and witnesses for the prosecution, it would appear that the said Gopeenath Mudduck and the three females abovementioned were on their way, on the 30th Bhadoon, from mouzah Saggoree to mouzah Semlea, and on their reaching the river Udjahee at about 10 A. M., they met the two prisoners. Plaintiff Gopeenath arranged with them to convey to the other side the two bundles, which he and Mussumut Doorga Myranee were carrying, which they did on the consideration of receiving some food. The two prisoners shortly after reaching the other side of the river, quitted the party. The plaintiff with the females also went on their way to Semlea; about 25 minutes after parting with the two prisoners, when they arrived at a jungle (Doodkoora) about a koss from the river, they were met again by the prisoners, who offered to accompany them through the jungle mentioning the road was dangerous, also recommending that the three females of the party should precede, and the plaintiff Gopeenath with the prisoners should follow. They proceeded in this manner a short distance, when the plaintiff Gopeenath was struck from behind by the prisoner No. 1, with a *lattee*, successively on both arms, raised to support the bundle on his head, which dropped to the ground; he then received two blows on each side of his knees, and one on his head, and fell down helpless. In the meantime prisoner No. 2, assaulted Mussumut Doorga Myranee who was

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other.

carrying the other bundle, striking her on the arms and knees. The prisoners then took up the two bundles and disappeared in the jungle. The plaintiffs proceeded to a village in the neighbourhood and reported what had occurred to the chowkeedar, and on their arrival at Semlea, 6th of Assin, they reported the circumstance at the *farree* at Semlea. The darogah of thannah Shehna accompanied the plaintiffs to the village of Gerrea, situated a short distance from the spot, where the robbery took place, and by the orders of that authority, the villagers were directed to assemble to enable the plaintiff to point out the persons who had robbed him and his party, the plaintiff in the presence of the darogah recognised the two prisoners, whose houses were then searched for the missing property unsuccessfully, but at a short distance in some jungle two *lattees* were discovered concealed, which have been proved to belong to the prisoners Nos. 1 and 2, also recognised by the parties robbed as those used on the occasion of their being assaulted. The contents of the bundles were said to be as follows, the one carried by Gopeenath about five seers of *sun* (or flax) concealed in which (for security) was a silver necklace, and a ditto chain; in that carried by Doorga Myranee was cooking utensils, food, &c., a silver armet and three small gold ornaments; none of this property has been found, with the exception of the *sun*, which was picked up, after the assault, by Gopeenath.

Prisoner No. 1 denies the charge, and called witnesses to prove *alibi*, also to an enmity which existed between himself and the chowkeedar of his own village.

Prisoner No. 2, pleads *not guilty* and called witnesses to prove an *alibi*, his enmity with the chowkeedar and good character.

This case was tried on the 12th, 13th and 14th of January, and the prisoners were found guilty of the highway robbery by a jury. In the verdict I agreed, and sentenced the two prisoners to the common jail with labor and chains for twelve years' each.

The parties who were robbed appeared to be of the middling class, and respectable, perfect strangers to the prisoners; the evidence given by them was clear, particularly as to the recognition of the prisoners, and to the weapons (*lattees*) found by the police, and with which they were assaulted. The prisoners both bear bad characters, and it is not the first time they have been suspected by the police of robbery. They both totally failed in proving an *alibi*, and their witnesses called to prove their good character, and the existing enmity with the chowkeedar were unnecessary, as their evidence was rather unfavorable to the prisoner's case than otherwise.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The only doubtful part of this case is the possibility that the chief witnesses may have been mistaken in the prisoners' identity. Their evidence, however, on this point seems confident

enough, and there is no apparent reason for their having selected and accused these individuals wrongfully.

On the other hand, the prisoners are men of bad characters and their defence has most signally failed. The witness, in whose house, Manick says, he was at the time of the robbery, has denied it, and Heera's witnesses declared he was not at work with them on that day, as alleged by him. I uphold the conviction and the sentence passed upon the prisoners.

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Case of
MANICK MA-
HATA and an-
other.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND BODHUN,

versus

MUTTYOOLLAH,

Backergunge.

CRIME CHARGED.—Fraudulently issuing and giving effect to a document by filing the same in the magistrate's court, knowing the said document to contain a fraudulent and injurious alteration in the endorsement to the stamp.

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CRIME ESTABLISHED.—Uttering a forged document.

Case of

Committing Officer.—Mr. E. F. HARRISON, joint-magistrate of Backergunge.

MUTTYOOL-
LAH.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 18th November, 1853.

The prisoner
was acquitted
for want of
proof of guilt
as regards
the alteration
charged against
him.

Remarks by the sessions judge.—The prisoner is charged with forgery, in that he altered the name of Dhun Bebee, for whose use (as the endorsement of the stamp vendor shows,) the paper was bought, into that of Bodhun Sheik.

It appears that the plaintiff and the prisoner are joint proprietors of an estate. Whether the plaintiff did really collect the rents of the prisoner's share or not, is a matter of dispute, but on the 13th May last, the prisoner charged the plaintiff with having embezzled the collections due to him while the plaintiff was his gomashta. The plaintiff appeared and denied ever having acted as agent of the prisoner, on a *kubooleent* said to be of his execution being filed, he declared it was a forgery, and as the register of stamps sold showed that there had been an alteration in the original endorsement, the charge preferred by the prisoner of embezzlement was dismissed, and he was put upon his trial for forgery and eventually made over.

The register obtained from the collector's record office shows, that the very stamp paper No. 138, filed by the prisoner was sold on the 25th August, 1840, to one Kulleem for the use of Dhun Bebee. That Dhun Bebee's name has been scratched out

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LAH,

and that of the plaintiff Bodhun Sheik written in its place, is plain beyond any doubt.

The prisoner insinuates in his defence that the alteration was made after he filed it. But he acknowledges that the paper is the very one which was filed by himself, and if so it is plain (unless it can be supposed that the stamp vendor committed an error in writing on the stamp paper the name of Bodhun Sheik for that of Dhun Bebee,) that the paper which came into his hands was sold for the use of Dhun Bebee. The question may then be asked to whose profit was it that Bodhun's name should be substituted for that of Dhun Bebee? The prosecutor himself would not have altered it, as it was better for him that the party purchasing the stamp should be other than himself. The only person who could benefit by the alteration was the prisoner. That the alteration was made after being filed there is not the slightest ground for presuming, and even if that insinuation had any truth in it, it was still the prisoner who was the party to gain by the alteration and no one but him, would therefore, have procured it. His object was plainly to obtain greater credibility for the document on which he relied to prove his claim of embezzlement against the plaintiff.

In conjunction then with the law officer, I held him convicted of the charge laid against him and sentenced him to three years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present; Mr. B. J. Colvin.) There is no doubt that the prisoner filed the deed, but that the alteration existed at the time is not proved. Sheik Bodhun first brought it to notice seven days afterwards, and it is just as possible that he may have intermediately procured it. I notice, moreover, that the prisoner's charge of embezzlement against Seikh Bodhun, was dismissed irrespective of the Kuboolceut.

I acquit the prisoner, and direct his release.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT, EKLAL JHA AND GOPEE JHA,

versus

HEAH JHA (No. 1.) HULMEE JHA (No. 2.) BHUGWAN TEWARY (No. 3.) HURBUNS SINGH (No. 4.) ROOP-NARAIN DOSS (No. 5.) HYBURN ACHARGE (No. 6.)

Purneah.

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Case of
HEAH JHA &
others.

CRIME CHARGED.—1st count, wilful murder of Peary Jha, against prisoner No. 1; 2nd count, maliciously setting fire to the house of Eklal Jha, against prisoner No. 2; 3rd count, complicity in the above crimes against all the prisoners; 4th count, plundering and destroying the property of Eklal Jha to the value of Rs. 4,000, against all the prisoners; 5th count, complicity in the wounding with intent to kill Gopee Jha.

Committing Officer.—Mr. H. Doveton, deputy magistrate of Mudhyppoorah.

Tried before Mr. G. Loch, officiating sessions judge of Purneah, on the 27th January, 1854.

Remarks by the officiating sessions judge.—On the afternoon of the 7th December, 1853, corresponding with 22nd Aghun, 1260, B. S. the prisoners, with a large body of armed men, who had been assembled at Heah Jha's premises, in mouzah Sitohur, where the zemindary cutcherry is established, entered the premises of the prosecutors and commenced pillaging their property. Eklal Jha concealed himself in the western house of the woman's mehal into which Heah Jha, Hurbuns Singh, Bhugwan Tewary and others entered, and there also commenced the work of pillage. Peary Jha attempted to escape from the north house of the inner mehal, when Bhugwan Tewary and Hurbuns Singh called out to Heah Jha that Tewary was escaping, "*maro*." On which, Heah Jha cut him across the back with a sword and he fell. Jhotun Jha (not apprehended) struck him with a club and broke his right arm. While this was going on (though in describing the occurrences, the witnesses state them in sequence) others of the rioters had entered Gopee Jha's house and were breaking his boxes, and on his trying to prevent them, Kanaya Jha struck at him with a sword. He warded off the blow aimed at his head, and received it on his arm. Two others of the party then attacked and beat him with sticks, and he ran from them to the entrance of the premises, where he fell. The rioters then completed the work of pillage and carried off cash, ornaments, clothes and other property valued at Rs. 4,000, and as they left, Hulmee Jha set fire to the house on the south side of the outer mehal, while Kunchun Jha and Baboo Lal Jha set

The prisoners charged with various offences, as set forth, were convicted and sentenced according to their several degrees of guilt.

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Case of
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others.

The prisoners plead *not guilty*; Heah Jha states that he was in his house all day and has called witnesses to prove that he did not accompany Bhugwan Tewary and Hurbuns Singh, when they plundered the prosecutor's property and burnt his houses. Hulmee Jha, Roopnarin Doss and Hyburn Acharge plead an *alibi*. The first was at Mootypore, two coss distant from Sitorhur, and did not return till the Saturday after the riot. The second was collecting rents in his own village at Bonrata, half coss from Sitorhur, when the crime was perpetrated. The third was cutting his paddy, two or three coss to the southward, and heard of the occurrence on his return home. Hurbuns Singh, jemadar, states that he sent Bhugwan Tewary with four other peadahs to prevent the rioters carrying off their paddy, which had been attacked, and Bhugwan Tewary says that while on the spot overlooking the labourers cutting the crops, he was attacked by Eklal Jha and a body of men, beaten and obliged to run to the zemindar's cutcherry.

* 1. Pirthnath Jha, The principal eye-witnesses are named in the margin.* These men depose that they saw Heah Jha strike Peary with a sword, at the instigation of Bhugwan Tewary and Hurbuns Singh. They saw Jhotun Jha break Peary's arm when down. They saw Kanaya Jha cut at Gopee Jha with a *tulwar* and others beating him with sticks, and finally they saw Hulmee Jha, Kunchun Jha and Babooram Jha fire the south, east and north houses. These witnesses have proved too much. What they state regarding Peary Jha's death must be received with great caution, from the crowd of armed men assembled in the inner mehal, it must have been almost impossible to see who struck the blow, though they were at no great distance, but when they go on to state further, that they saw the houses fired by Hulmee and Kunchun and Babooram, great doubts are thrown on the credibility of their whole evidence, because from the places they occupied, it was impossible to see who applied the fire, particularly to the eastern house, which was lighted from behind, while witnesses, Nos. 2 and 3, were in front of it. Lullit Jha says the *tatties* of the east house, had been pulled down by the rioters, but this is disproved by the evidence of Manick, No. 4, and Bhowany,

No. 5, who say that when Kunchan applied the fire, one could not see into the inner mehal, because of the *tatties*. The witnesses vary as to the place where the fire was applied, Lullit says the N. E. corner, to suit his story, Modu Jha fixes on the S. E. corner, while Manick deposes to the fire being applied to the centre of the house. Similar discrepancies appear on comparing the evidence, as to firing the southern house, which was first lighted, and be it remembered, the eastern house was then standing, and came between Lullit Jha and the south house. There seems however, no reason to suspect the evidence of Bhowany, who saw Hulmee Jha set fire to the south house, nor of Huri Jha, who recognised the prisoners and several others among the rioters.

The opinion I have formed of the case is, that the prisoners did, as deposed to by the prosecutors and witnesses, attack and plunder the property; that in the tumult Peary Jha was so severely wounded, while attempting to escape, that he died the same night in consequence of the wound; that Gopce Jha was wounded and beaten; and that, as the rioters were going off, Hulmee Jha set fire to the southern house; that the fire communicated to the other houses in the neighbourhood, and twelve of them and three *gholas* were burnt down. The law officer acquits Heah Jha of the murder, convicts Hulmee Jha of the second charge, arson, and all the prisoners on the other three charges. In this finding, I concur, and as the crime is of so heinous a character, I beg to recommend that the prisoners, Heah Jha, No. 1, Hulmee Jha, No. 2, Bhugwan Tewary, No. 3, and Hurbuns Singh jemadar, No. 4, who appear to have been most active in these riotous proceedings, be sentenced to ten years' imprisonment with labor and irons, and that Roopnarain Doss and Hyburn Acharge be sentenced to seven years' imprisonment with labor and irons.

The circumstances which led to this crime are as follow. Mouzah Sitohur, in pergunnah Harnuth, is held by Sriputh Jha, as an *istemrar*, from the former zemindar, Raja Bejoy Gobind Singh. Pergunnah Harnuth was sold in execution of a decree and purchased by Baboo Pertaub Singh, who claimed Sitohur as part of the *mal* lands and endeavoured to take possession. Part of the riots, of whom Heah Jha is chief, have joined the zemindar, others, of whom Eklal Jha is the principal, remain with the *istemrardar*. Dispute and fighting have been going on for nearly two years, complaints have been made in the criminal courts, suits instituted in the collector's court, but the deputy magistrate of Mudhypoora has most unfortunately never thought it necessary to bring the case under Act IV. of 1840. He has, heretofore, punished Heah Jha and others for assault and severe wounding, but the punishment was very inadequate to the crime proven, as is evident from copy of his proceeding, filed

1854.

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Case of
HEAH JHA &
others.

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others.

with *nuthee*, and these measures to preserve the peace have been quite insufficient, and the zemindar's party have now been emboldened to make a great effort to get rid of an obnoxious partizan by cutting and carrying off his crops, which they did on the 6th, and pillaging his property and burning down his houses, hoping probably either to make him succumb or leave the village.

The deputy magistrate has omitted to prepare the statement, required to be filed with the *nuthee* by the Court's Circular Order of 31st August, 1853, No. 9, nor has he stated in the calendar to what points the witnesses in column twelve were able to testify. I have called upon him for an explanation and have prepared the statement. The darogah has taken the evidence of the eye-witnesses, Manick and Bhowany together, and their statement before that officer differs materially from their depositions before the sessions court, as to the recognition of prisoners. On being questioned on this point, both witnesses deny having stated other than what they did before the court, and the deposition before the darogah being a joint statement, it is impossible to ascertain what either of the witnesses really did say.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) Mr. Waller has appeared to defend all the prisoners. He admits, what there can be no doubt of on the evidence, the violent death of Peary Jha, the wounding of Gopee Jha and the arson and plundering charged; but he refers to the sessions judge's statement of the incredibility of the evidence of the witnesses, Nos. 1, 2, 3, and argues that there is absence of sufficient proof against the prisoners, of being the parties, who committed the offences.

I find, however, that the evidence of these three witnesses is, particularly on the points of Peary Jha's death and the wounding of Gopee Jha, greatly corroborated by the depositions of Eklal Jha and Gopee Jha; and as regards the act of incendiarism by Hulmee Jha, by the evidence of witnesses, Nos. 4 and 5.

As the sessions judge and law officer have both acquitted Heah Jha of the murder of Peary Jha, I cannot disturb their finding in that respect, although I think that he is sufficiently proved to have dealt the blow on the spine, which caused deceased's death a few hours after. I therefore convict him, as the sessions judge has done. I also agree in the conviction of prisoners, Nos. 2, 3, 4, 5 and 6. The evidence against Hulmee Jha of having set fire to the houses is clear and consistent throughout. His defence of *alibi* at a village, only two coss off, is feeble and unworthy of attention. The presence of Nos. 3 and 4, during the outrage, is proved by the evidence of certain of the witnesses even for the defence; while there is nothing to invalidate the testimony of the witnesses against Nos. 5 and 6.

As regards the sentences, I think those proposed for Nos. 3, 4, 5, 6, sufficient, but considering the prominent part taken by Heah Jha and Hulmee Jha, I sentence them each, according to the court's resolution of 17th September, 1847, to fourteen years' imprisonment with labor and irons in banishment.

1854.

March 28.

Case of
HEAH JHA &
others.

PRESENT :

A. DICK, Esq., *Judge*.

GOVERNMENT,

versus

ANUND KALINDEE CHOWKEEDAR.

Midnapore.

1854.

March 29.

Case of
ANUND KA-
LINDEE CHOW-
KEEDAR.

CRIME CHARGED.—Wounding with intent to kill, in having intentionally and maliciously, severely wounded witness No. 1, on the head with a stick and afterwards, conceiving him to be dead, throwing him into a river.

CRIME ESTABLISHED.—Assault attended with aggravating circumstances.

Committing Officer.—Molvly Golam Sufdur, law officer, exercising powers of a magistrate.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 26th January, 1854.

Remarks by the sessions judge.—The prisoner is charged with wounding with intent to kill. The witness No. 1, Seeboo Roy, deposes that on the night of the 27th October his lodging was entered by a body of men armed with sticks, who assaulted him and forcibly, carried him away and threw him into the river, that with great difficulty he effected his escape and proceeded to the house of the witness No. 11, Choto Bungshee Mundul, who applied medicine to his wounds and afforded him shelter till his relatives arrived and took charge of him. The prisoner pleads *not guilty* and sets up an *alibi*. The statement of witness No. 1, Seeboo Roy, is corroborated by the evidence as to the fact of his being forcibly carried away from his house and maltreated. The witness No. 11, deposes to his coming to his house shortly before day light in an exhausted state, that he was naked and blood was flowing from wounds on his head, and that he said he had been attacked and beaten by the prisoner Anund Kalindee. Seeboo Roy's story, and there is only his word for it, in regard to his being thrown into the river, is contradictory and has, in my opinion, been added with a view to implicate the prisoner in the more heinous offence of endeavouring to take his life. The report of the medical officer, (which was received as evidence, as his personal attendance could not be secured, owing to his re-

Prisoner con-
victed of as-
sault attended
with aggravat-
ing circum-
stances, sen-
tenced to five
years' impris-
onment with
labor & irons.

1854.

March 29.

Case of
ANUND KA-
LINDERCHOW-
KEEDAR.

moval from the station) represents, that when he examined Seeboo his head and back were covered with marks of his having received a severe beating with a stick, that the wounds were of superficial nature, none of them of a dangerous character and had all healed when he examined him. It is to be gathered also from the evidence that Seeboo Roy, who is the zemindar's naib-tehsildar, had incurred the displeasure of some of the ryots of his master's villages by resuming their rent-free lands. One of whom brought a charge against him before the deputy magistrate at Jehanabad, who dismissed it for want of proof. This I imagine was the cause that prompted the prisoner and others to retaliate on Seeboo Roy, by taking the law into their own hands and making the unwarrantable attack which is now the subject of enquiry, though I do not think there is any thing in the evidence to warrant the presumption that their intention was to kill. The proof of the identity of the prisoner as the person who assaulted Seeboo Roy is conclusive, supported as it is by the circumstance of his absconding the day following the assault. The assault (considering the time when and the circumstances under which it was committed, and the fact of the prisoner being a Chowkeedar, who was bound to protect life and property) was of an aggravated nature and the penalty awarded should be in proportion. The assessors declare the prisoner guilty of an assault attended with aggravating circumstances, and concurring in this finding, the prisoner is sentenced as recorded in the statement.

Sentence passed by the lower court.—Five years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The Court see no reason for interference with the sentence passed on the petitioner, Anund Kalindeo.

PRESENT :

A. DICK, Esq., *Judge.*

GOVERNMENT AND OTHERS,

versus

CASHEGIR.

Sarun.

1854.

CRIME CHARGED.—Riot attended with culpable homicide of Sewnarain Rai (deceased.)

CRIME ESTABLISHED.—Being an accomplice in the riot attended with culpable homicide.

Committing Officer.—Mr. J. F. Lynch, deputy magistrate of Sewan, with powers of a magistrate.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 21st January, 1854.

Remarks by the sessions judge.—This is the continuation of a case of riot attended with culpable homicide, tried here in August, 1850, and the following were the remarks made on it in the statement of prisoners punished without reference for that month.

In this case it appeared that Joynarain and Sibnarain (deceased) were driving off, to the Derowlee thannah, four head of cattle belonging to Kashee and Lalsa (Ahirs) which had been caught trespassing and destroying the crops of the prosecutors Joygobind Jodha and Hemraj. The drivers were attacked with a view of rescuing the cattle, by Bungsee, Kashee, Lalsa, Achumbit and Rittoo, who with *lobundahs* and *lattees* killed Sewnarain on the spot. His liver was found to be lacerated and four ribs broken, with other marks of contusion. The three prosecutors, the first of whom was also wounded, and the second and third, son and grandson of deceased, swore to the fact, and their statements were verified by the evidence of other witnesses. The prisoner denied, pleading that he was at Doomraha from Phagoon to Bysack, (including the period of the assault) and two witnesses were cited by him in support of this *alibi*, but they were not credited, indeed it was evident that they had been tutored, for they were unable to state the date even of their giving evidence in court. I concurred with the law officer in the conviction of this prisoner.

This prisoner, who is brother of the prisoner then punished at that time, effected his escape from justice, but having now been apprehended has been sent up for trial. He was clearly spoken of from the first as having taken a leading part in the affair and as he is satisfactorily identified as the party then named, and quite fails in showing that the charge made against him is false, I have, in concurrence with the *futwa* of the law officer,

March 29.

Case of
CASHEGIR.

Prisoner convicted as an accomplice in riot attended with culpable homicide, sentenced to four years' imprisonment. Appeal rejected.

1854. (which makes him liable by *tazeer*) convicted and sentenced him for the crime to the punishment awarded to his accomplice, viz. four years' imprisonment without labor and irons and a fine of 50 Rs., or in default of payment to labor until the fine be paid or the term of the sentence expire.

March 29.

Case of
CASHEGIR.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. Dick.) The Court see no reason for interference with the sentence passed on the prisoner, petitioner.

PRESENT :

A. DICK, Esq., *Judge, and*

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

ROOPA KAREEGUR (No. 2,*) MEERJAN KAREEGUR (No. 3,*) BASHEE KAREEGUR (No. 4,*) PAKHALEE KAREEGUR (No. 1,) MUSST. HARANEE (No. 5,) RAJA MOHUMMUD KAREEGUR (No. 6,*) EJA KAREEGUR (No. 7,*) BEJNA KAREEGUR (No. 8,*) ESSA KAREEGUR (No. 9,*) AND KALOO CHUNG CHOWKEEDAR (No. 10.)*

Dacca.

1854.

CRIME CHARGED.—Nos. 1 to 4, wilful murder of Laloo Kareegur; No. 5, 1st count, accessory before and after the fact; 2nd count, privy,—Nos. 6 to 10, accessories after the fact.

March 29.

Case of
PAKHALEE
KAREEGUR
and others.

Committing Officer.—Zynooddeen Hossein, deputy magistrate of Manickgunge.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 4th March, 1854.

An accom-
plice in mur-
der, present &
aiding, sen-
tenced to im-
prisonment for
life, under
the aggravat-
ing circum-
stances.

Remarks by the sessions judge.—From the evidence of this

† No. 8, Baroo Kareegur. witness†, it will be seen that he was aroused in the night of the 14th

Aughun by an alarm given by Haranee, wife of Laloo Kareegur, (deceased) when he, the witness, went out and saw four persons carrying the corpse of Laloo. They escaped, but he recognised two of them, Pakhalee and Roopa (Nos. 1, and 2.) The body was found near the jungle and Haranee, the prisoner No. 5, stated that her husband had been murdered by the prisoners, Nos. 1 to 4, with all of whom, she admitted having intrigue. The murder was said by the witnesses to have been perpetrated in

* Acquitted by the sessions judge.

consequence of deceased's having been about to leave the village. The witness further deposed to an attempt made by the prisoners, Raja Mohumed and Essa (Nos. 6 and 9,) to conceal the murder, by bribing the chowkeedar, prisoner, No. 10.

The evidence of this witness was corroborated by his wife (witness No. 9*), who recognised all the prisoners and also generally by witness,† who however did not see who the parties were that carried the body. These witnesses‡ certified to an admission of Haranee of connexion with all the prisoners,

* No. 9, Musst. Bhubee.

† No. 10, Pullro Kareegur.

‡ No. 9, Musst. Bhubee.
No. 10, Pullro Kareegur.
No. 11, Jhuguree Kareegur.

Nos. 1 to 4.

The depositions of these witnesses show several discrepancies, both with each other, and with what was said by each person at the thannah and before the magistrate. Roopa and Pakhalee alone were recognised by two persons. The night was dark, the prisoners at some distance from the witnesses; and although, I have little doubt, that the fact of four persons being seen carrying the body, is true, I do not consider the prisoners were sufficiently recognised to allow me to convict them as principals in the murder, on such evidence alone.

Musst. Haranee was, according to her statement, first made at the thannah, present when her husband was killed; she gave

the alarm, the witnesses§ confirm this, but I consider that by her subsequent contradictory statements, she has rendered herself liable to punishment as an accessary after the fact in having attempted to screen the

murderers.

§ No. 8, Baroo Kareegur.

No. 9, Musst. Bhubee.

No. 10, Pullro Kareegur.

No. 11, Jhuguree Kareegur.

The charge, against the other prisoners, Nos. 6 to 10, is only proved by the evidence of two witnesses,|| who do not agree one with the other. Although as a chowkeedar, Kaloo Chung, prisoner, No. 10, may be liable to punishment, the crime against him is not sufficiently proved, in consequence of the contradictions of the two witnesses (man and wife) to allow of any sentence being passed on him by this court.

|| No. 8, Baroo Kareegur.

No. 9, Musst. Bhubee,

the charge, against the other prisoners, Nos. 6 to 10, is only proved by the evidence of two witnesses,|| who do not agree one with the other. Although as a chowkeedar, Kaloo Chung, prisoner, No. 10, may be liable to punishment, the crime against him is not sufficiently proved, in consequence of the contradictions of the two witnesses (man and wife) to allow of any sentence being passed on him by this court.

Pakhalee, prisoner, No. 1, confessed at the thannah and before

¶ No. 12, Bheloo Kareegur.

No. 13, Nrijoo Kareegur.

No. 14, Meelun Kareegur.

No. 15, Aushkur Kareegur.

No. 16, Kashee Kareegur.

No. 17, Caroo Kareegur.

No. 18, Shorcoor Mahomed Kareegur.

the magistrate. In this court, he, as well as all the other prisoners, denied their guilt, wishing to show that the deceased, Laloo, had committed suicide. They called witnesses,¶ who however proved nothing in their favor.

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March 29.

Case of
PAKHALEE
KAREEGUR
and others.

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Case of
PAKHALEE
KAREEGUR
and others.

No. 19, Pasha Kareegur.
No. 20, Dagoo Kareegur.
No. 21, Duiloo Kareegur.
No. 22, Rumtha Kareegur.
No. 23, Sheik Chand.
No. 24, Sheik Aumeera.

The law officer convicts Pakhalee Kareegur (No. 1,) and acquits all the other prisoners.

I concur in the *futwa*, except for reasons already stated in regard to Musst. Haranee (prisoner No. 5,) and

would convict Pakhalee on his own confession and the evidence, of being an accomplice in the murder, and the prisoner No. 5, of being an accessory after the fact.

I would recommend Pakhalee to imprisonment with hard labor for fourteen years, and Musst. Haranee to imprisonment with labor suitable to her sex, for two years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The Court, in concurrence with the *futwa*, acquit the female prisoner, No. 5, Musst. Haranee, and observe that the sessions judge has not stated distinctly on what grounds he would convict her. It is by no means clear that she was present when her husband was murdered, and more than doubtful that he was murdered in his own house.

They concur in convicting the prisoner, No. 1, Pakhalee on his own confessions, especially on that given before the magistrate, of being an accomplice in murder, present and aiding therein; and sentence him, under the aggravating circumstances, to imprisonment for life in transportation.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge*.

GOVERNMENT,

versus

RAJNEE METHRANEE.

24

Pergunnahs.

1854.

March 29.

Case of
RAJNEE ME-
THRANEE.

The prisoner was acquitted as no charge of perjury could, under the circumstances, be sustained.

CRIME CHARGED.—Perjury, in having on the 30th August, 1853, deposed on solemn declaration before the magistrate of the 24-Pergunnahs, in the case of Government versus Afzalunnissa *alias* Oomrao Begum and others, charged with the murder of Alarukhee Chookree, that she had not stated to the darogah of Kalighat on the 28th August, 1853, that she had seen the embryo of a child in a *handee* within a fowl-house in the mehal Sahibzadah Muneeroodeen, and the deceased Alarukhee Chookree lying on the ground in the same place, and that the deposition forwarded from the thannah as hers in the aforesaid case had not been omitted by her, such statement being wilfully false on a point material to the issue of the case.

Committing Officer.—Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 9th March, 1854.

Remarks by the officiating additional sessions judge.—The charge against prisoner is perjury, in giving false testimony under solemn declaration and the particulars are detailed in the indictment.

The witnesses indicated in the margin,*
* Witnesses Nos. 2, attest the record of the contradictory statements by the prisoner, before the police and the magistrate, and the proceedings of the lower court appended to the trial show, that the false swearing was on a point material to the issue of the case under investigation.

The grounds of the commitment are very clearly given by the magistrate in the calendar and show, that the breaking down of a serious charge, of causing death by using violence to procure abortion, brought against Omroo Begum, wife of one of the members of the Mysore family, was partly ascribable to the prisoner's conduct in the affair.

The prisoner denies the charge before this court, and refers for her defence to a petition presented to the magistrate after her commitment; she takes exception therein to the following points connected with the proceedings of the police against her, namely her ignorance of the Bengali language in which these proceedings were prepared, informality in the constitution of the office held by the functionary who is said to have recorded her statement at the thannah, and the consequent vitiation of that statement as a legal record, her detention at the thannah a night and a day before her examination was taken, and the want of character, as trustworthy witnesses, of the persons who attest that examination, from their habit and custom of giving evidence.

The trial was postponed for ten days, to allow the prisoner to file recorded proofs of the last cited objection, but all she produced was a list of cases prepared by her pleader, in which she alleged that the persons concerned had given testimony, with the request that either the list should be forwarded to the magistrate for enquiry and verification, or the cases mentioned therein sent for from his office and examined by this court. I rejected both these prayers as opposed to the grounds on which the case was postponed.

The *futwa* convicts the prisoner of the crime charged and declares her liable to discretionary punishment by *tazeer*.

I concur in the finding, and sentence the prisoner Rajnee Methranee to three years' imprisonment without labor, but perceiving nothing in the case to warrant the suspicion that she was actuated by malicious or vindictive feelings, in giving the false evidence, would recommend that the sentence be mitigated to one year's simple imprisonment.

1854.

March 29.

Case of
RAJNEE ME-
THRANEE.

1854.

March 29.

Case of
RAJNEE ME-
THRANEE.

"

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I do not think that the charge of perjury can be sustained in this case. The charge consists in the prisoner having denied on oath that she had made the statement, which the darogah recorded, the *fact* of having made the statement being only in question, not the *matter* of that statement. Now the *fact* of having made that statement was not material to the issue of the judicial proceeding, then pending before the magistrate, for whether she had made it or not, could not have affected the parties on trial.

Had the darogah's conduct been in question, the case would have been very different.

I acquit the prisoner and direct her release.

PRESENT:

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND GOPEENATH GOPE,

versus

Dacca.

RAMCHUNDER KURMOKAR (No. 3,) AND GOUR MO-
HUN KURMOKAR (No. 4.)

1854.

March 29.

Case of
RAMCHUN-
DER KURMO-
KAR and an-
other.

CRIME CHARGED.—1st count, culpable homicide of Musst. Anundo Bewah, sister of the plaintiff, Gopeenath Gope, by administering drugs to procure abortion; 2nd count, administering drugs to procure abortion.

CRIME ESTABLISHED.—No. 3, being an accomplice in administering medicine to procure abortion, from the effects of which, Musst. Anundo died. No. 4, administering medicine to procure abortion, from the effects of which, Musst. Anundo died.

Two prisoners convicted by the sessions judge, one as principal and the other as an accomplice in administering medicine to procure abortion, acquitted by the Court owing to the insufficiency of the evi-
dence,

Committing Officer.—Zeinoodeen Hossein, deputy magistrate of Manickgunge.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 14th December, 1853.

Remarks by the sessions judge.—This homicide has resulted from an attempt at infanticide. The circumstances are briefly as follows. The prisoner, No. 3, Ram Chunder, had criminal connection with the deceased, Musst. "Anundo," a young widow of about sixteen or seventeen years of age, and she became pregnant. Very late in the evening of the 11th August last, corresponding with the 28th Shrabun, 1260, a younger brother of the aforesaid prisoner called away "Anundo" from her mother's to the house of Gour Mohun, prisoner, No. 4, the maternal uncle of the other prisoner. The witnesses, Nos. 1 and 2,

having occasion to go to that house shortly after, saw the prisoners, Nos. 3 and 4, one Hurro Chunder Kurmoker and Sukhee and the deceased there, and heard the prisoner, No. 4, trying to persuade her, Anundo, to take some physic. She declined doing so at first, saying, she had twice before taken it without effect and was afraid this dose might kill her. She was, however, over-persuaded that it would not hurt her and took it.

She then returned home and shortly after became ill. Great hæmorrhage took place, and she complained of a severe burning sensation over her body, and after lingering in this state for three days, died. The zemindars appear to have culpably neglected their duty in not giving information to the police and in having induced the cremation of the body, so that no inquest or *post mortem* examination could take place. Their conduct is under enquiry by the deputy magistrate. From the evidence of the witnesses no doubt remains that the physic was administered as above stated. Musst. Anundo's subsequent illness and death is fully proved by the witnesses, No. 3, Chedam, No. 9, Dugce Bewah, the mother, and No. 10, Kalachand, the brother of the deceased. The evidence of witnesses, Nos. 4 and 5, is mere hearsay. Nothing exculpatory of the prisoners is proved by the witnesses for the defence. The *futwa* convicts the prisoners on strong and violent presumption, No. 4, of having administered medicine to procure abortion, from the effect of which, Musst. Anundo died, and No. 3, of being an accomplice in the said crime. Concurring with the law officer, I have sentenced the prisoner, No. 4, for having administered medicine to procure abortion, from the effects of which Musst. Anundo died, and No. 3, for being an accomplice in the said crime, to five years' imprisonment with labor in irons.

I find that in pronouncing the sentence, the use of the words, in irons, was an error, they shall be omitted from the warrant.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) Two witnesses (a man and woman of the lowest class,) who were examined by the police several days after the death, are the only persons who speak to the facts, and they state they were only accidentally present at the house of the prisoners, when they were persuading the girl to take *some* medicine, and one of them tells contradictory stories at the sessions and the foudary, as to whether she took it or not. They also state themselves to have been at the girl's house about the time of her death, and describe the symptoms attending it. The girl's death may have been suspicious, but there is no medical evidence to trace it to the cause assigned, and it would be very unsafe to rely on such evidence, as we have here, to connect the prisoners therewith. I therefore consider them entitled to their acquittal.

1854.

March 29.

Case of
RAMCHUN-
DER KURMO-
KAR and an-
other.

PRESENT :

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND RAMHIT MISSER,

versus

Shahabad. MOHEEPAL (No. 4,) AND SOONSAREE (No. 5.)

1854. CRIME CHARGED.—Assault and severe wounding of Ramhit Misser the prosecutor.

March 31. CRIME ESTABLISHED.—Assault and severe wounding of Ramhit Misser, the prosecutor.
Case of Committing Officer.—Mr. H. C. Richardson, officiating magistrate of Shahabad.
MOHEEPAL & another.

Prisoners convicted of assault and severe wounding, sentenced to three years' imprisonment by the sessions judge. Appeal rejected. Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 30th December, 1853.

Remarks by the sessions judge.—The facts of this case are these.

A bullock belonging to one Ramjuttun Misser strayed into a field. Prisoner, No. 4, who was in charge of the field drove it off, and on Ramjuttun's saying that the bullock had been allowed to trespass by accident, the prisoners, with others before the court, attacked Ramjuttun. He escaped from them and they then assaulted the prosecutor, who was with him, and wounded him most severely with their sticks on the head and body.

These facts are established before the court by eye-witnesses.

The prosecutor suffered severely from his wounds and is still in a very weak and disabled state.

The prisoners plead *not guilty*.

No. 4, alleges that he was beaten by Ramjuttun and another, but the allegation is not established.

Prisoner No. 5, alleges an *alibi*, but the evidence adduced in support is quite insufficient to establish the plea. The place where he professes to have been, is little more than a mile distant from that where the assault took place, and the witnesses' testimony is not worthy of credit.The *futwa* convicts both prisoners and declares them liable to *tazeer*.*Sentence passed by the lower court.*—Each to be imprisoned without irons for three (3) years, from the 15th December, 1853, and to pay a fine of 100 Rs., on or before the 30th December, 1853, and in default to labor until the fine he paid or the term of sentence expire.*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. T. Raikes.) The prisoners have urged nothing in their petition

of appeal, but appointed two mooktears, who, however, although informed that the case would come on for hearing this day, are not present. 1854.

After perusing the evidence on record, I see no reason to interfere with the orders of the sessions judge, and therefore reject the appeal. March 31.
Case of MOHERPAL & another.

PRESENT :

A. DICK, Esq., Judge.

GOVERNMENT AND BESUMBER AHEER,

versus

DOOLAR AHEER (No. 3.) BHUNJUN AHEER (No. 4.)
JAGUN AHEER (No. 5.) KEENOO AHEER (No. 6.)
AND RAM LAL AHEER (No. 7.) Shahabad.

CRIME CHARGED.—Wilful murder of Sittiloo Aheer cousin of the prosecutor Besumber Aheer. 1854.

Committing Officer.—Mr. J. F. Worsley, deputy magistrate of Sesseram. March 31.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 29th November, 1853. Case of DOOLAR AHEER and others.

Remarks by the sessions judge.—The facts of the case are these. One Samodh Aheer died leaving some cattle.

The cattle were claimed by Ungnoo Aheer (witness No. 1,) whom Samodh had brought up as his adopted son, and also by Doolar Aheer, prisoner No. 3, the own brother of the deceased Samodh. Five prisoners convicted as accomplices in the wilful murder of a man who had given an unfavorable decision to them in his capacity of arbitrator.

For the settlement of this dispute the parties appointed Sittiloo Aheer (the deceased) as arbitrator.

His decision was that the cattle belonged, neither to the witness Ungnoo, nor the prisoner Doolar, but to the wife of the deceased Samodh.

Ungnoo then by the direction of the arbitrator proceeded to drive away the cattle, when Doolar, (prisoner No. 3,) his two sons (Nos. 4 and 5,) and prisoners Nos 6 and 7, made a savage attack upon the ill-fated arbitrator, with heavy sticks. The man fell senseless under the blows and died three hours afterwards.

These facts are sworn to by eye-witnesses.

The medical evidence, taken before the magistrate of Mirzapore where the corpse was examined, corroborates the inquest paper, which shows, that the skull of the deceased was fractured to the extent of 6 inches, as by a heavy blow, sufficient in itself to cause death : marks of other blows were also visible.

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The prisoners pleaded *not guilty* but made no defence, the witnesses, who were examined on their behalf, having before the magistrate denied all knowledge of the plea then set up.

The *futwa* convicts the prisoner of culpable homicide, declaring that wilful murder is not established, because the sticks with which the blows were given have not been produced; a further *futwa* declares that had the sticks been produced and been shewn to be thick and large, as described by the witnesses, wilful murder would be proved and the prisoners liable to *kissas*.

It appears to me that this is a clear case of murder.

The sole provocation given was that the decision of the umpire was unfavorable to the prisoner Doolar.

The circumstances tend rather to aggravate the crime, the person of the arbitrator who seems to have decided the dispute with impartiality and justice was, if any thing more sacred, than that of any other. He was unconnected with the litigants and no way involved in the dispute, and his only offence was, the delivery of righteous judgment.

The attack was savage and cowardly, five men uniting in the assault against one.

The sticks used were large and thick, the fatal blow was a deadly one, as the skull was extensively fractured.

I recommend that the prisoner Doolar, as the principal party, be hanged; and the rest of the prisoners transported for life beyond sea.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) This is no doubt, so far as in evidence, a cruel and cowardly case of attack; and a murder perpetrated in the assault. But there is not a particle of evidence to prove who commenced the assault, or who dealt the fatal blow; and there is not a suspicion of premeditated malice. The attack was the effect of momentary irritation; but it was brutal, Doolar as the parent, and aged, is most culpable. The *futwa* of this Court considers the crime as murder; but *kissas* barred, as who struck the fatal blow was unknown. The Court convict all the prisoners of being accomplices in murder, aiding and abetting; and sentence them, under the circumstances, Doolar prisoner, No. 3, to transportation for life; and the rest to fourteen years' imprisonment with labor in irons in banishment.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

UDEEKAREE UNEEROODH DOSS AND GOVERNMENT, Cuttack,

versus

RAMKISTO DOSS (No. 1.) AND BHAGBUT SINGH
(No. 2.)

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CRIME CHARGED.—Nos. 1 and 2, 1st count, wilful murder of Musst. Chundermonee, concubine of Uneeroodh Doss, prosecutor; 2nd count, burglary and theft of property valued at Rs. 3,697-5-1, attended with murder, and No. 2, 3rd count, knowingly keeping in possession property obtained by the above crimes.

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Committing Officer.—Mr. E. Drummond, magistrate of Pooree.

The prison-
ers were con-
victed of being
accomplices in
murder and
theft, and sen-
tenced to
transportation
for life.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 31st December, 1853.

Remarks by the sessions judge.—The murder occurred on a Thursday night, the 1st September, 1853, at the Bulram Koth Muth in the town of Pooree, during the absence of the owner Udeekaree Uneeroodh Doss, the joint prosecutor with Government, he having gone to the mofussil to collect his rents, leaving the deceased Musst. Chundermonee his concubine, Ramkisto Doss his *chela*, and Bullee Bearah his servant in charge of the Muth, and information of the occurrence was first communicated by the said Bullee Bearah to the jemadar of the *singh durwajah* Phandy, who after going to the Muth and seeing the body of the deceased, reported the occurrence at the thannah at about 3 A. M. when the acting darogah Rughoonath Bose proceeded to the spot, and what he there learned, is recorded in his deposition, the purport of which is as follows.

At 3 o'clock of the night, of the 1st of September (should be 3 A. M. of the 2nd) I received information of the occurrence from Narain Singh the *singh durwajah* jemadar, and proceeded to the prosecutor's Muth, where I saw the body of Chundermonee lying, the lower extremities on the ground and the upper on her cot bathed in blood, with wounds on either side of the neck and likewise adjoining the private parts or pit of the stomach. I then enquired of Ramkisto Doss and Bullee Bearah who were present, how the murder had been committed, when Ramkisto Doss said, that ten persons came and bound him, and committed the murder and took their departure. I immediately went to the magistrate and informed him what had happened, and at break of day forwarded the body of the deceased to the medical officer, and observing blood on the hand and feet and face of Ramkisto Doss, I suspected him and took him and Bullee Bearah to the

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thannah, to ascertain from them the particulars of the case, and sent word to the plaintiff. I also saw the locks of the plaintiff's *malkhannah* door and chest broken, but in the absence of the plaintiff could not learn what had been taken, and placed a guard over it. The plaintiff arrived on the evening of the 3rd, and on the 3rd and on the 4th charged Ramkisto Doss and Bullee Bearah with being the perpetrators of the crime, and took them to the Muth where the plaintiff gave in a list of the property that had been stolen. And while I was inspecting the spot, where the ladder was placed against the wall of the Muth, some persons called me saying Ramkisto Doss had sent for me, and on going to him he told me that if I sent for Guness Surringhee and the Brahmin who lived in his house, he would disclose the facts of the case. I then caused their attendance, and Ramkisto Doss stated, that two days before the occurrence, Ramchunder Surringhee the said Brahmin was sent by Guness Surringhee to call him, and on his going to him he said to him that he (the prisoner) and his mother Chundermonee were always quarrelling, he would send five persons to assist him in bringing away the property and she would then cease to thwart him, and he should have an eleven annas share of the property, and those whom he would send to assist him the other five annas, and that he also gave him some medicine or drug to administer to her to stupify her, which he mixed with some cocoanut but it turned the cocoanut black and he threw it away.

At this stage of the investigation, the plaintiff represented that the knife which ordinarily remained in the Muth was missing, and on my asking Ramkisto Doss where it was, he after searching for it in various places produced it from under a stone and said that the five individuals whom Guness Surringhee had deputed had done the business, (i. e. had committed the murder and robbery.) I then asked him the names of the five persons, and he said, he did not know them, but that on seeing the individuals he could recognise them. I next asked Guness Surringhee about the occurrence and he denied all knowledge of it, and searched his house, but found nothing except some *goondee* (or powder of some description) which on being showed to Ramkisto Doss, he said was similar to what Guness Surringhee gave to him. By this time the day had closed in, and on the following day, the 5th September, I assembled some bad characters and respectable persons both together, when Ramkisto Doss selected several persons including the prisoner Bhagbut Singh from among them, as the parties concerned; and at the time Bhagbut Singh was arrested, twelve rupees were found in his waist, and on searching his house at 3 P. M. the same day property *as per chalan*, which I don't at present recollect, was found either buried or loose about his house, together with a *lotah* containing 200 rupees and upwards, which was dug up

from a potato crop in his garden, and there not being time that day to search his other two houses, one of which contained *dhan* and the other grass, I placed a guard over them and went to search Andee Mhaintee's house, whence only some rupees were found, which along with the said Andee were released. On the 6th, I deputed Muddun Singh jemadar to search the remaining houses of Bhagbut Singh, while I went to search those of others, and the jemadar found rupees twenty-six in the *cooking house* and a sword in the garden of Bhagbut Singh, and that day the guard remained over his house. And entertaining great suspicion against him, in consequence of property having been found on both occasions when his house was searched, I, the following day, caused about one or one-half *goonths* of land in his garden to be dug up and from the root of a *panikendy* or tree, a brass box, two silver foot *kurroos*, one silver *bazoo* or armlet, and a brass lock were found, and at a little distance from these things an iron pin or instrument (about a foot in length) called an *ekmonee* was also found. And on my questioning Bhagbut Singh he said, "that he did not kill Chundermonee, that Ramkisto Doss took him, Nirdhoom Doss, Annund Mhaintee and Akka Panda and seated them on the roof of the *muth*, while he himself brought out the property and gave it them, and they brought it away and buried it." I then immediately while in his garden committed Bhagbut Singh's answer to writing, and afterwards examined his wife, who named Bhagbut Singh, Nirdhoom Doss, Akka Panda and Guness Surringhee and pointed out Bullea Bhooee and Bhagrutty Mhaintee, as the parties who brought the *mal* at night and buried it. I then searched the houses of the other defendants, but found nothing and brought my investigation to a close.

Bullee Bearah witness No. 20, aged sixteen years, servant to the prosecutor, deposed that on the evening of the occurrence, on his informing the deceased Chundermonee that there were no vegetables for their evening repast, she told Ramkisto Doss to prepare some cocoanut, that while he was scraping it out from the shell he went to fetch some water and on his return observing no cocoanut, he asked Ramkisto Doss the cause, and was told by him that it had fallen among the saw dust. That after they had all got their portion of *mahapersad*, Chundermonee accompanied by one Bheekaree Mhaintee went to perform obeisance at the temple of Juggernath, that when they went, Ramkisto Doss accompanied them to the door and having closed it after them, returned into the *muth*, when the light in the apartment in which Chundermonee and a child "Bulram Chokra" slept, went out, and he, witness, told Ramkisto Doss to light it, but instead of doing so he came and blew out the light where he was engaged eating his *mahapersad*, and on his asking him why he did so, he said he was fixing it and it went

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out, he could not help it. That he, witness, at his telling them, went and brought a light from outside, and placed the *basons* or plates inside the house or *muth* and was going to sleep, when his mother Chundermonee returned, and on Bheekarry Mhaintee's going to his own house, he, witness, closed the sudder door of her apartment, and then went and slept at his usual sleeping-place. And at about midnight he was awoke by Ramkisto Doss calling out to him that ten persons had bound him. That he, witness, told him to get up, and at the same time called to his mother Chundermonee, but she gave no reply; and after calling to her several times, Bulram Chokra, who was sleeping in the same apartment, came crying to the door, and at his telling, opened it, when he again called to Chundermonee but she still remained silent, and he became alarmed and called up Ram Doss Babajee (alias Ramanooj Doss witness No. 7,) one of his neighbours, and informed him what Ramkisto Doss had told him and that his mother (Chundermonee) when called to, gave no answer. That Ram Doss Babajee told him to light a *chirag* and accompanied him to the spot where Ramkishto Doss was, and found him tied with his own clothing, and on their asking him how he was placed in such a situation, he repeated the story that ten persons had come and bound him and threatened to kill him if he made any noise. That they then untied him and he told them to go inside and see what had happened, and on their doing so, they discovered Chundermonee's body lying half on the cot and half on the ground covered with blood; that he, witness, then went to the *malkhanna* the doors of which he found had been broken open, and Ram Doss Babajee told him a dacoity had been committed and he should give information at the thannah, and he forthwith went to the *singh durwajah* Phandy and told the jemadar who came to the spot and seeing what had happened took him forthwith to the thannah. This witness on being further questioned, by the court, stated that he rubbed the deceased's feet on her retiring to rest and that she at that time, had ornaments on her arms and feet as well as on her neck and on her ears. Also that he heard no noise whatever in the *muth* during the night till he was called up by Ramkisto Doss.

Ramanooj Doss, witness No. 7, corroborated the statement of witness No. 20, regarding his having been called by him to the *muth* and his having seen Ramkishto Doss tied with his clothing, as well as the dead body of Musst. Chundermonee and the doors of the *malkhannah* opened, &c.

Musst. Sonnee No. 18, the wife of the prisoner Bhagbut Singh, stated that she was altogether ignorant as to how the property found in her garden got there, or to whom it belonged. She also said she did not know to whom the *lotah*, found in the potato crop, belonged. And although she did in her foudjary

deposition name some persons as having come to her garden, on the night of the murder, it is altogether a very contradictory and unsatisfactory statement.

The finding of the various articles of property and cash, on the three different occasions that the house and premises of Bhagbut Singh prisoner No. 2, were searched, has been duly deposed to by the numerous witnesses detailed in column No. 11, of the calendar.

Witnesses Nos. 2, 3, 4 and 5, deposed to the correctness of the darogah's report on the *post mortem* investigation of the deceased's body, which according thereto exhibited the following wounds :—one wound or stab on the throat over the windpipe, two on the left side of the neck, one on the left shoulder and one on either side of the private parts. It also represents that the *noolees* had been snatched from both ears, tearing the flesh, but that the *phaseecas* in both ears, the silver *cach*, three pairs, and *kurroos* one pair on either wrist, one silver *annutburt*, or armlet, on the left arm, a *soorbulee dhotee*, and some rings on her toes, remained. The above witnesses, however, had apparently no recollection that these were ornaments on the body of the deceased, for in the first instance with the exception of No. 5, who said he only saw two *kurroos* on her hands, they all stated that they saw no ornaments. And subsequently on being questioned how, under such circumstances, they certified the correctness of the *sooruthal*, some stated that they saw certain ornaments, and others that they had forgotten whether there were ornaments or not on the body.

Witnesses Nos. 2 and 5, further deposed that there was blood on the hands and feet of the prisoner Ramkisto Doss, but No. 3 stated, that though he looked he could see none, and No. 4, that he did not hear any one say that there was blood seen on Ramkisto Doss, but Ramanooj Doss witness No. 7, stated that he saw blood on his hands and face.

The following are abstracts of the statements made by Ramkisto Doss prisoner No. 1, before the police darogah.

On the 4th September, 1853. That about two months ago, Guness Surringhee told him that in consequence of Chundermonee Uneeroodh Doss's concubine, having a large quantity of property she paid no respect to him, that if he would consent to do what he proposed and pointed out the property, he would send five persons to bring it away, and having lost her property she would be more tractable or would not domineer over him. That he, the prisoner, then asked what portion of property he would give him, and he replied that he should get half and the other half should be given to the people who brought it away, and on his objecting to this, he said he should get a ten annas share of it and the others the remaining six annas, but to this he also objected and it was arranged that he was to have eleven

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annas and the others five annas. That on a subsequent occasion, the said Surringhee told him to bring the brass *dhourcea*, or bead worn by Bulram Doss, the adopted son of Chundermonee, about his neck by way of a *charm*, and give it to him, as it would be of great service, and on Tuesday last he snatched it from him and gave it to Surringhee, and Chundermonee quarrelled with him for doing so. That on the following day he went to the *mundeer* (Juggernath) when a Brahmin, Guness Surringhee's nephew, whose name he did not recollect, told him Guness had called him, to go quickly to his house and on his going there he directed him to take some *mahapersad* in his hand and make oath to preserve secrecy, and he would tell him something, that he then took the *mahapersad* in his hand, and Guness Surringhee told him he would send me five persons as before arranged, and on his pointing out the property they would bring it away, and he promised to do so. That Guness Surringhee then gave him some *goondee* (powdered drug or medicine) which he told him to mix with something and give it to Chundermonee to stupify her or make her insensible, and while she was in that state he would send the people to carry off her property. That he then took the *goondee* and the *dhowrea*, about which Chundermonee had quarrelled with him, to the *muth*, flung the *dhowrea* along side the door from whence the child picked it up, and placed the *goondee* in the *chupper*, and on Thursday night at about two *ghurrees*, when Chundermonee went to *dursun*, the said Surringhee sent five persons with a *sabul* (or iron crow-bar) and a tube lock key, and on their arrival, he, the prisoner, concealed them in a house to the south of Chundermonee's apartment, and then went and laid down on the ground in Chundermonee's apartment, while Bulram *Chokra* slept on the cot, and when Chundermonee returned from *dursun* he went to her usual sleeping-place leaving Bullea rubbing her feet and fell asleep; and at what time Bullea left Chundermonee, or how the persons killed Chundermonee he did not know. And on being further questioned by the darogah, he stated, that he mixed up the medicine (*goondee*) with some cocoanut, but it turned the cocoanut black, and he threw it away, that he tasted a little of it and it stupified him, and he went to sleep; that the knife belonging to the *muth* was in his *thakoor-baree*, but the Surringhee was skilled in witchcraft, and he might some how have taken it away. The prisoner then after searching about the *muth* produced a knife from under a stone in the court-yard, and stated that it belonged to the *muth*."

Again on the 5th September, the prisoner on being told to tell the truth as to how and by whom Chundermonee was killed, he stated that he was asleep when, out of these five persons, pointing to Nirdhooma, Andeeah, Bhagbut Singh, Akka Panda, and Bullea Bhooee, (whose names he said he did not know but

that he distinctly recognised them and that in the Bhoose's hand there was a *sabul* Bhagbuteeah, Andeeah and Nirdhooma awoke him and took him to Chundermonee's sleeping apartment, and he stood there while Nirdhooma laid hold of Chundermonee's feet and Bhowree Saka (i. e. Bulleca Bhoose) her hands and Bhagbuteeah held a cloth over her mouth, with one hand and held her by the waist with the other, and as they lifted her from the cot, he, the prisoner, told them not to kill her, to take away the property; that they then said they would not kill her, and told him to point out the property and remain where he was; and Bhagbut let go his hold of her while Andeeah held her, and on his, the prisoner's, pointing out the house where the property was, he (query, Bhagbuteeah) applied the key to the lock, but it broke, and he forced open the lock with the *sabul* and having entered the house, called to him, the prisoner, and he also entered the house, when Andeeah, Nirdhooma, and the Bhowree, in whose hand the *sabul* was placed, Chundermonee, who had been killed by the squeezing of her throat, on her cot, her feet resting on the ground; and leaving the Bhowree by her, Andeeah, Nirdhooma came and told him that as they lifted her, they put some medicine into her mouth and she was asleep, that Bhowree and Akka Panda were by her side and would give them warning (if she got up). That they, four persons, viz. Nirdhooma, Andeeah, Bhagbuteeah, and he, the prisoner, took the property from the box, the lock of which Bhagbuteeah broke open, and Nirdhooma, Andeeah and Bhagbuteeah took a cup which he heard from his mother (the deceased) contained rupees 460 and likewise a *lotah* containing pice, to Chundermonee's sleeping apartment, where they hid them in an old turmeric-stained piece of cloth and carried them away by the metall'd road.

And on the 8th September, being a third time questioned, answers to the following effect were elicited from the prisoner, "that he did not know how, or by whom the wounds were inflicted, but he concluded that Bhagbuteeah wounded the deceased with the *ekmoonee* (iron pin) which was found in his *barree*, and that he had made *poojah*, or an offering of her to the Dabee Thakoorain. That he could not tell whether Chundermonee was dead when she was stabbed with the *ekmoonee*, but when Bhagbuteeah squeezed her throat she became insensible. That the blood on his hands and feet was caused by his showing the body to the jemadar before the arrival of the darogah. That the other defendants told him not to mention their names and to say that some one bound him and took the property, and therefore he did not say in the first place they took the *mal*. That at the time of the occurrence Bullee Behara was asleep and knew nothing about it."

The remainder of his replies are mere repetitions of what has been already recorded.

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The statement made by the above prisoner, Ramkisto Doss, before the magistrate, which is very lengthy, is in substance the same as that made before the darogah, and it therefore appears unnecessary to record it in full in this place. The only material difference between it and his mofussil confession is, that he endeavoured to make it appear that he neither took an active part in the murder, or the plundering of the *malikhanah*, and that he did not leave the spot where he was sleeping. For he stated that after the persons deputed by Guness Surringhee had completed their work and placed the property in the *choka* or court-yard, they came and asked him by which way they were to take their departure, and he told them to fix the ladder, which was in the court-yard, against the wall and get over it. Also that on his saying that his mother would get up and accuse him of having broke open the locks, (the said persons having as is alleged told him that she was asleep), they proposed to bind him, and that Nirdhooma and Bhagbuteeah tied him with his *gumcha* and *chudder*, leaving them sufficiently loose over his mouth to enable him to breathe, and told him not to disclose their names, that he should get an eleven annas' share of the property, and themselves five annas, as arranged by Surringhee, &c. And though he acknowledged his mofussil confession before the magistrate, he at the same time stated, that he was beat and tutored by the darogah, who told him that if he would point out the property, and the perpetrators of the crime he should be released, and that he would cause the former *hibah-namah* to be cancelled and a fresh one (making over the *muth* to him,) to be prepared.

The above confessions were proved to have been voluntarily made, by the testimony of the subscribing witness, viz. the mofussil confessions by that of witnesses, Nos. 2, 4 and 6, and that of the darogah himself, and the fujdaree confession by that of witnesses, Nos. 9 and 11.

The confessions of Bhagbut Singh, prisoner, No. 2, recorded before the darogah on the 7th September, 1853, is to the following effect.

That he did not kill Chundermonee, but about seven days ago, he did not recollect the exact day, at five *ghurrees* of the night, or 10 P. M. he and Anund Mhaintee, two *chassas* (cultivators) and a Brahmin, whom he did not recognize, as it was dark, were sitting together at Jumeemooneeah, when Ramkisto Doss called them and took them under the eaves of the *acharry muth*, where he caused them to stand, while he went to his own *muth*, and brought a ladder, which he placed against the wall, and they got on the roof of the *muth* and thence into the *chok* or courtyard; when they inquired where the female and the *gor* or bearer were, and Ramkisto Doss said they were asleep; that if they got up he would kill them; that they then

got into the *malkhannah chok* by aid of the ladder, and Ramkisto Doss broke open the locks of the doors and the chest with a *sabul* or crow-bar, which was under the *ghan kotree*, and brought the property and gave it to them; and they had taken it to the *pukka* (query, the roof) where Chundermonee called out to Bullee Gor, and Ramkisto Doss told them to go away. That he, the prisoner, inquired how they could go, when the female called out, and Ramkisto Doss said he would kill her; and they placed the ladder on the side of the *muth*, adjoining the *acharry muth* and went away. And on being further questioned he said, "that the *ekmoonee* or iron-pin found in his garden, was his; that he took it with him to the *muth* and buried it in his garden along with the property; that Ramkisto Doss killed Chundermonee and gave them the property (viz. the foot *kurroos*, the brass box and padlock, in which the deceased kept her gold mohurs and a silver *tar* or armlet), which they buried where it was found; that he did not know to whom the sword belonged; that he did not see Anund Mhaintee give any *ilāj* to Ramkisto Doss; and that he did not know with what instrument Ramkisto Doss killed Chundermonee.

Witnesses, Nos. 2, 3, 7 and 8, and likewise the darogah, deposed that the above confession was voluntarily made, though witnesses, Nos. 2 and 3, represented in their depositions that the prisoner named more of his accomplices than are recorded in his confession, and No. 8, stated that he was present when a part only of it was written, and that he signed it at the thannah.

Before the magistrate, Bhagbut Singh, prisoner, No. 2, retracted the above confession, and stated that he was absent in the mofussil, where he had gone to purchase *ghan* at the time of the occurrence; that he returned home on Saturday and was on Sunday called to the thannah, where he was beat, and had rupees 12 taken from him, and that his wife buried rupees 480, which he had realized by the sale of rice by his *toolse chora*, after one of the burkundazes had been to his house and demanded the delivery of all the money he had there. Also that the silver *kurroos* and brass box were found in the garden adjoining his *barree* or enclosure. And that he affixed his mark to his mofussil examination by order of the darogah.

Before this court, Ramkisto Doss pleaded *not guilty*, and stated that he knew nothing about the case, that he had represented to the magistrate how he had been tutored by the darogah, and that he stated at the thannah and before the magistrate as he had been tutored by the darogah. That the darogah caused Joy Misser to draw out a *hibbanamah* on an eight annas' stamp, which was brought by Lokee Misser, and said that the case would not be proved against the persons whom he had accused; that he was to name the persons whom he, the darogah, would summon, and he would easily prove that they had

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the stolen property. That he was severely beat and twice became insensible; that lighted cocoanut husks were applied to his back, and through fear of the beating, and being tempted by the promise of the *hibbanamah* and his release, he said he would cause to be written whatever the darogah told him. That the darogah said, "he would send for *dagee-chors*, what harm would it do him," and five persons were brought and Bulkishen Benakar, witness (No. 4.) put some *oushud* (medicine) into his hand and told him to place it in Guness Surrunghee's house (who had already been apprehended) and he would prove the case against him, and having done according as he was told, Balkishen Binakar said the *oushad* alone was found in his, Guness's house. That he and Guness Surrunghee were then taken to the thannah, where Nirdhooma Doss was summoned, and he, the prisoner, was told to identify him, and on his saying there was a person like him among the others, he was apprehended and detained; on the following day, Monday, Andeeah, Akka Panda and Bhagbuteeah were in like manner brought, and he was asked whether they were among the party, and on his replying that such like persons were among them, they were also detained, and he mentioned their names as he was tutored to do. That on Tuesday he was kept in the stocks at the thannah, whence he was released at midnight, when Muddun Singh and two burkundazes gave him something tied up in a *gamcha* which they told him to take to the *muth*, and they would there release him; that they then took him to the *Singh durwaza* thence to Dolmundub Sahac and various other places, but finding no suitable place (to leave the contents of the *gamcha*) they came to Mutinundub Sahabee where, in a gully, two burkundazes were sitting, who asked who they were, and Muddun Singh, jemadar replied giving his name and title; that the said jemadar then told the burkundazes to take charge of him, the prisoner and himself with the two burkundazes, who were with him, went away and returned one *ghurree* afterwards, and took him, the prisoner, to the *Singh durwaza* where, telling him to look towards the *Pullit pabun thakoor*, they put some *mahapersad* into his hand, and told him not to tell any one that he had been taken about at night, and to state before the saheb (magistrate) as the darogah had tutored him; after which they took him back to the thannah, but did not further molest him. And on Wednesday morning, they gave him a *loth* and some *mahapersad*, and cajoled him and told him to go to the defendant's house and identify the property, and then took him to Matinundub Sahabee to the house of the defendant in the gully, where he was taken at night, and there produced the *mal* from his *barree*, where it had been placed, and the darogah told him that the name of the said defendant was Bhagbut Singh, and asked him whether the *mal* was the property (that was stolen) or not, and

on his saying that the *mal* was lying at night in the *choona chok*, and asking how it had got there, he was silenced by the jemadar and burkundazes and taken to the thannah, where they tied him to a tree and beat him severely until he became insensible; and when he was brought round, the darogah took him near the *toolsee chara* and placed *mahapershad* in his own, and prisoner's hands, and told him not to be down-hearted, he would tell Mohunt Soodursun Doss, who was an influential person, to make him mohunt, and he, the darogah, would cause the *hibah-namah* to be registered, if he would state before the magistrate, as he told him; that if he did not, he, the darogah, would be dismissed, and the murder would not be proved, and he said as he was told, &c. He also stated that on his suspicion, Soodursun Doss and certain of the witness, who have given evidence in the case, were apprehended and detained three days at the thannah, but Soodursun Doss being a rich man, he and the others were discharged.

The above prisoner, on being asked if he had any witnesses to his having been beat and tutored, replied in the negative.

Bhagbut Singh, prisoner, No. 2, pleaded total ignorance of the case and stated that after he attended at the thannah on Monday, the darogah took him before Ramkisto Doss, prisoner, No. 1, and asked the latter whether he was among the party, who went to the *muth* on the night Chundermonee was killed, and on his replying that a person of his appearance was among them, the darogah said his name was Bhagbut Singh and told him to accuse him, after which he was confined in the stocks, and the rupees 12, which he had about his person, and which he refused to give to the police as a bribe, was taken from him. That at about 10 o'clock he was taken to his house, where the darogah asked him how much money he had in it, and informed him that he had about Rs. 400 or 500, besides *tummusooks* and other property, and he was then placed at the door while the jemadar, burkundazes and other persons entered the house, broke open his chest, dug up the floor or ground, took his money and all his property, and then called Madhee Mahapatur and Pudnee Swar and told them, in opposition to their remonstrances, to be witnesses to the fact of his having stated that there were rupees 40 or 50 in his house; and on his, the prisoner's, telling them that he had said there were four or five hundred rupees in his house, he was told by the darogah to sue him in the civil court, if he had any claim against him, and he was then taken back to the thannah. That on Tuesday, after the house in which he kept his *dham* had been searched, the guard was taken off his house, and on Wednesday, the darogah brought the brass box, or *pán batta*, and silver *kurroos* (articles Nos. 46 and 47,) to the thannah, and said they had been found in his, the prisoner's, *barree*; on which he informed the darogah that the *barree* was

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not his; that it was the *Allookoth muth bageecha*, and asked him why, if the *barree* was his, he did not search it when he first searched his house. And as the *barree* was open, if any person had buried or thrown any thing into it, he had nothing to do with it. And he was then taken to the thannah *barree*, where he was severely beat and maltreated, and afterwards forwarded to the magistrate.

The prisoner, Bhagbut Singh, cited several witnesses to prove that he was absent from Pooree on the night of the murder, and that he traded in *dhan*, rice and wood, and was a respectable character, but those cited to prove the former circumstance pleaded ignorance of the fact, and while some of the others merely stated that he kept a shop and sold rice and wood, and that they did not know what sort of character he was, the other stated that they did not even know he kept a shop.

The *futwa* of the law officer, which accompanies the record, convicts the prisoners, Ramkisto Doss and Bhagbut Singh, of being accomplices in the murder of Chundermonnee and the burglarious theft of property, valued at Rs. 3,697, from the *muth* of the plaintiff, Uneeroodh Adhicarry Doss, and further convicts the said Bhagbut Singh of knowingly having in his possession a part of the stolen property, and declares both prisoners liable to punishment (*accoobut*.)

And in the above conviction I fully concur. It is quite palpable that without the connivance and assistance of Ramkisto Doss, the prisoner, No. 1, who is the *chela* of Uneeroodh Adhicarry and was in his absence the guardian of the *muth*, as well as of every person and every thing in it, the murder and robbery could not have been committed; and his confessions which have been proved to have been voluntarily made, and the fact of his having been found loosely tied in his own clothing, immediately after the occurrence, fully shown how deliberately and treacherously he planned and accomplished his purpose.

As regards Bhagbut Singh, the prisoner, No. 2, also, I think, with reference to his mofussil confession, which is proved to have been voluntarily made and to have been recorded in his *barree* or garden, immediately after the production therefrom of the *kurroos*, *cách* and brass box, and the general circumstances of the case, there exists violent presumption of his guilt as an accomplice in the murder and robbery notwithstanding the said articles, viz., the brass box, No. 46, the *kurroos*, No. 47, and the *cách* (or *bazoo*), No. 48, were not found till his house and premises were searched the third time, and it seems to me exceedingly doubtful whether the *cách*, No. 48, as represented, was taken off the arm of the deceased; passing over the other ornaments she is said to have had on her wrist, at the time of the murder, even of the article in question be what it is called, a *cách* or *bazoo*, i. e. an ornament worn on the arm above the elbow

by females of the northwest provinces. In fact it appears to me, to be like any thing rather than an ornament likely to be worn by a female of the deceased's station and circumstances, and such being the case, I submit it for the inspection of the superior Court.

The Court will observe that in the petition delivered into court by the prisoner, Ramkisto Doss, at the close of the trial, it is stated that the box and *kurroos*, produced from Bhagbut Singh's *barree* along with the said *cadch*, were picked up by the darogah in the *choona chok* of the *muth* after the murder.

Under the above circumstances, I, in accordance with the *fatwa*, beg to recommend that both Ramkisto Doss and Bhagbut Singh be sentenced to imprisonment for life in transportation beyond sea. The facts attending the murder would, I think, have justified my recommending a capital sentence being passed on Ramkisto Doss, but I have refrained from doing so, as it is not usual in cases in which several parties are concerned, and in which, evidence is wanting to establish the fact of any particular person having actually taken part in the killing of the deceased, to pass such a sentence.

Resolution of the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) No. 169, dated 22nd February, 1854.

The Court, having perused the papers connected with the above case, observe that after the defences of Ramkisto Doss and Bhagbut Singh were taken (papers Nos. 61 and 65, of the record), further questions were put to certain of the witnesses for the prosecution, (papers Nos. 68, 69 and 70, of the record) when further defence was taken (No. 71, of the record) from Ramkisto Doss *alone*, and then followed further questions to some witnesses for the prosecution, without any further defence having been taken, from either of the prisoners. When the sessions judge had taken the further evidence referred to, he should have called upon the prisoners to state what further they had to say in defence, and then he should have taken the evidence of their witnesses. As he has not done so, the proceedings of trial must be returned to him, that the prisoners may have the opportunity of saying any thing they may wish in reply to the further questions put to the witnesses, after their defences *in extenso* were recorded. After taking the further defence of the prisoners, the sessions judge will call upon the law officer for another *fatwa* and then submit his proceedings, with those now returned, for the orders of the Court.

In reply to the above resolution, the sessions judge submitted the following letter No. 71, dated 13th March, 1854.

I have the honor to acknowledge the receipt of the Court's resolution, No. 169, dated the 22nd February, 1854, on the trial of Ramkisto Doss and Bhagbut Singh charged "with the wilful murder of Mussumut Chundermonee, with burglary

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and theft of property valued at Rs. 3,697-5-1, and keeping in possession property obtained by the above crimes," and having in obedience to the Court's orders called on the prisoners to state what further they had to say in their defence, consequent on the additional questions put to the witnesses for the prosecution, viz. Debadee Jenna No. 13, Bunmalee Doss, No. 14, Nitye Bej, No. 8, and Rughoonath Bose, the police darogah, No. 19, after their defence was recorded, I now beg to submit my further proceedings in the case.

Ramkisto Doss, prisoner No. 1, merely stated that Balkishen Benakur and others, told him to say as he had been tutored by the darogah and he would be released. That what he had before stated before this Court was correct. And that he had no witnesses to call in his defence; that if he cited any, the darogah would tutor them.

Bhagbut Singh, prisoner, No. 2, states that the witnesses who have given evidence against him are his debtors and that the police darogah, after ascertaining their names from the bonds and lists of property pledged or mortgaged to him, found in his house, sent for them and caused them to give evidence. Also that there was a road on either side of his house and *barree* and that his *barree* or garden was not enclosed; and he requested that they might be examined; and the bonds, &c. in his house called for. But he likewise cited no witnesses to his defence, stating no one would give evidence through fear of the darogah.

Agreeably to the above request, on the part of Bhagbut Singh, I addressed the letter marked A* filed with the record to the officiating magistrate of Pooree, and received in reply

* To the officiating magistrate of Pooree, No. 69, dated 8th March, 1854.

With reference to the annexed vernacular proceeding, held this day in the sessions court, I request that you will, with the least practicable delay after the receipt of this letter, proceed to the house of Bhagbut Singh, at present a prisoner in the jail of Cuttack, being charged with the wilful murder of Musst. Chundermonee, the concubine of Udeekaree Uneeroodh Doss, situated in Matimoondai Sahae in the town of Pooree, and make or cause to be made in your presence a correct map of the house and *barree* or garden of the said prisoner, *particularly* noting therein the description and height of the hedge or fence round the *barree*, whether it is *completely* closed in or not, and whether a person would have any difficulty or not in getting over it. This inquiry should be made in the presence of his wife, Musst. Soonai, who should be required to point out the boundaries of the garden.

I also request that you will call on the said Musst. Soonai to produce the bonds or *tummusooks*, executed by the persons named in the accompanying proceeding, as well as any other bonds or lists of pledged or mortgaged property belonging to her husband, which she may be in possession of, and forward them with a list, which you will be so good as to have made on the spot in the presence of Musst. Soonai, to this court.

The above sketch of the prisoner's premises should show the nature of the ground immediately contiguous thereto, viz.: whether it consists of roads or the houses of other individuals.

letter B* with annexures, C and D,† from which the Court will perceive that the *barree* or garden of the prisoner, though enclosed, is only surrounded by a hedge, three feet in height, which could be easily topped or climbed over, and this was my full belief on hearing the evidence for the prosecution, and therefore it in no way alters the opinion I have already recorded of Bhagbut Singh's guilt.

With regard to the bonds and documents for money, which were found in possession of the prisoner's wife and forwarded to this court by the officiating magistrate of Pooree, they merely tend to show that the prisoner is in the habit of lending and advancing, on pledge or pawn, small sums of money, but none of them are in the names of any of the persons cited by the prisoner in his present defence, save one, viz. an *ikrar* or agreement, bearing date 7th Kukudah, 1260 Unk 44, corresponding with the 20th July, 1853, for a loan of Rs. 18-8, purporting itself to have been executed by Dhurmoo Behra, witness, No. 31, of the calendar; and though the said Dhurmoo Behra, on being asked by the prisoner, denied that he was indebted to him, I do not consider either the fact of the existence of the bonds, or Dhurmoo Behra's denial, sufficient to set aside the strong presumptive proof of the guilt of Bhagbut Singh afforded by his own *mofussil* confession, and the general circumstances of the case. Whether Dhurmoo Behra was instigated by the *darogah* or any other person to state that he was ignorant whether the prisoner had any *karbar*, i. e. trading or money transactions, and to deny that he had borrowed any money from him, or whether he denied for the purpose of evading his debt, or whether in fact the bond is genuine, (though I see no reason to doubt its authenticity,) it is impossible to tell.

The law officer in his second *futwa*, recorded this day, adheres to his former view of the case, and convicts both the prisoners, Ramkisto Doss and Bhagbut Singh, of being accomplices in

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* From the officiating magistrate of Pooree to the sessions judge of Cuttack, No. 65, dated 11th March, 1854.

Agreeably to your letter No. 69, dated 8th instant, I have the honor to enclose herewith a map of the house and premises of Bhagbut Singh, prisoner, situated in Maheemoondaee Sae in the town of Pooree, which has been correctly made out in my presence, the boundaries marked being exactly those pointed out by Musst. Soonai, wife of the prisoner. The information called for, has been noted down in the map.

Tummusooks and other papers fourteen in number, belonging to the prisoner and produced by his wife, the said Musst. Soonai, as being the only documents in her possession, are also herewith forwarded together with their list both in English and Oryah, the latter having been written out on the spot, and in the presence of Musst. Soonai.

Of the *tummusooks*, executed by persons named in the vernacular proceeding, which accompanied the letter under acknowledgment, only one was found, viz. that given by Dhurmo Behra.

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the murder and burglarious theft of property, valued at Rs. 3,697, from the *muth* of the plaintiff, Uneeroodh Adhicarry ; and Bhagbut Singh, on a second count, of having in his possession part of the stolen property knowing it to have been so acquired ; and declares both liable to punishment by *accoobut*. And seeing no reason to alter the opinion I before recorded on the case, I, in concurrence with this verdict, would sentence them, as recommended in my report of the 3rd ultimo.

I beg to state that my reason for not having called on the prisoners for any further defence, after I interrogated the witnesses named at the commencement of this report, as to whether the *lotah* and rupees found in Bhagbut Singh's *barree* were buried under the earth, was that the answers of the witnesses did not materially affect the position of either of the prisoners and they had not only had opportunities of cross-examining each witness throughout the trial, but they had exhausted all their arguments in defence in their twofold oral and written answers previously filed and recorded.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) Having gone attentively through the proceedings, I concur with the law officer and the sessions judge in their finding.

There is no doubt that the deceased was murdered, although it is impossible to say from whose hands she received her death wounds. It is manifest, however, that the prisoner No. 1, was a *particeps criminis*. He only gave the alarm when his associates were gone, and when he could make it appear that he had been tied up by the robbers. If he was not connected with them, he would have roused his neighbours at once. His confessions too, which are detailed at length by the sessions judge, corroborate his guilt. There is no proof of his *mofussil* confession having been extorted, and it must be borne in mind, that the murder was committed in the town of Pooree so that the inquiry was going on under the magistrate's own eye, and a complaint of violence, if there had been any, could easily have been made.

The proof against Bhagbut Singh is his *mofussil* confession, and the finding of a considerable portion of the stolen property on his premises. He had the same opportunity of complaining to the magistrate, if any unfair means had been employed to put it there.

Both the prisoners are hereby sentenced as proposed by the sessions judge. I note that I do not share in the doubts expressed by him respecting the *cach*. It is worn on the thick part of the arm, and therefore could be slipped over the wrist. It is such too as females wear.

P. S. A further defence should invariably be taken after fresh evidence for the prosecution.

PRESENT :
A. DICK, Esq. *Judge.*

GOVERNMENT,

versus

SHEIKH HEEDIE (No. 1,) SHEIKH SAFDER (No. 3.)
AND SHEIKH TAPOO (No. 4,) AND OTHERS.

Sylhet.

1854.

CRIME CHARGED.—1st count, prisoner No. 1, dacoity in the house of the informant attended with the forcible abduction of informant's daughter Nazook, and theft of her property to the amount of thirty or forty rupees ; 2nd count, dacoity with rape on the person of Mussumat Nazook Beebee, informant's daughter. Prisoners Nos. 3 and 4, 1st count, dacoity in the house of the informant attended with the forcible abduction of informant's daughter Nazook and theft of her property to the amount of 30 or 40 Rs. ; 2nd count, aiding and abetting in rape.

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Prisoners
charged with
dacoity, ab-
duction, theft
and rape, con-
victed of ab-
duction by the
sessions judge.
Appeal reject-
ed.

CRIME ESTABLISHED.—Prisoner No. 1, abduction of a married woman, and prisoners Nos. 3 and 4, being accessaries after the fact to the abduction of a married woman.

Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 22nd February, 1854.

Remarks by the sessions judge.—The prosecutor is the father of Nazook Beebee, who is stated to have been carried off, robbed and raped, but was not present at the time of the occurrence.

Nazook Beebee (witness No. 1,) stated that on the 19th of January last, she was sleeping with her mother in her silk *saree* (her husband being in Calcutta) when about 12 at night, the house was attacked by several people carrying torches and was entered by the five prisoners who after tying up two men, Sheikh Kuttoo (witness No. 3,) and Aleem (witness No. 2,) and wounding her mother on the head carried her off by force. That the prisoners 1 and 2, raped her in the jungles while the other prisoners stood by and that they afterwards carried her off to the house of Sheikh Tapoo, (prisoner No. 4,) where she was ill treated every night by the same two prisoners till she was released by the police. That they robbed her also of her necklace and other ornaments, and stripped her of her clothes, giving her coarse ones in exchange, but that she could not, from confusion of mind say, which prisoner had stripped and robbed her. She denies that she was ever previously acquainted with the prisoners and states that she screamed and resisted them to the utmost ; her age is said to be thirteen, but she appears to be fifteen or sixteen. Arusbee (witness No. 4,) deposes

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to the same story as her daughter with this difference only, that the thieves lighted their torches after they entered the house. She at first denied that she was acquainted with the prisoners previously, but on being cross-questioned unwillingly admitted that she had seen them go by the house.

Sheikh Kuttoo (witness No. 3,) Aleemoollah (witness No. 2,) depose that they were tied up and threatened by the prisoners on their calling out, but that they distinctly recognised them and that there were other men outside the house.

Ashker Mahomed (witness No. 5,) Burkutoollah (witness No. 6,) Sheikh Aleem (witness No. 7,) depose to having gone to the prosecutor's house on hearing the noise, and to seeing the prisoners and many other men with torches going away. The two first denied that they could see Nazook Beebee in consequence of the crowd about her, but that they heard her sobs, Sheikh Aleem swears he saw her in the house of the prisoners Nos. 1, 2, and 5.

On notice of the alleged outrage being given at the thannah, two burkundazes (witnesses Nos. 8 and 9,) went to Tapoo's house when the prisoner No. 1, on being questioned admitted Nazook Beebee to be there and produced her, and in the house they found also Tapoo (prisoner No. 4,) and Sheikh Sufder (prisoner No. 3,) who is the brother of Sheikh Heedie.

The prisoners all deny the dacoity and rape, but Heedie admits that he took Nazook Beebee away, on the night of the occurrence, with her own consent, he having for some time previously carried on a criminal connexion with her and he says he took her to Tapoo's house in consequence of the mother's discovering the elopement and making a disturbance. He called witnesses to prove that the girl had no ornaments, but they stated they had not seen her since her wedding.

Saboroollah denies all knowledge of the crime, while Tapoo and Sufder admit that the girl was brought to their house by the prisoner Heedie. Wuntée Doss pleads *not guilty* and says he heard of the transaction from Sheikh Heedie. These four prisoners produced witnesses to character, but failed to establish a good one, indeed all five prisoners have been apprehended and convicted of theft or have been charged with theft and been acquitted.

The assessors convict the prisoner Heedie of the abduction of a married woman and Sheikh Tapoo and Sheikh Sufder of being accessories after the fact, and acquit Saboroollah and Wuntée Doss *not guilty*, for they state they cannot believe the evidence as to the dacoity and rape and in this verdict I concur.

From the evidence given for the prosecution, it is clear, if credible, that the sole object of the dacoity was the person of Nazook Beebee, for no property in the house was touched, though the witnesses state that an Almirah was wantonly

broken. The house of Sheikh Heedie is a few yards only from that of the prosecutor, and the attainment of the person of Nazook Beebee would have been more easily affected by stratagem or blandishment than by a gang of armed men. Torches, moreover, were unnecessary as it was moonlight. Had the girl been abducted in the manner deposed to, she would undoubtedly have been seen by the witnesses Ashker Mahomed (No. 5,) and Burkutoollah (No. 6,) and her screams would have been heard by them, yet they say they only heard sobs. It is not even attempted to be shewn who the remaining parties were who joined in the outrage, and I am of opinion that Sobdureollah and Wuntée Doss were charged only because they were bad characters. The assessors tell me it is unusual for women to sleep in a silk dress, and the prosecutor did not demand the search of the prisoner's house, which I think he would have done had the girl had ornaments on her person.

The girl was probably enticed away by the prisoner Heedie, and the false charges of dacoity and rape were then preferred with the view of concealing the disgrace of the elopement.

The medical officer of the station examined the person of Nazook Beebee, and reported to the magistrate that he could discern no marks of violence, though he was of opinion that the woman had frequently cohabited with men.

Sentence passed by the lower court.—No. 1 six months' imprisonment with labor and to pay a fine of 200 Rs., or to be imprisoned with labor for another six months and to pay 25 Rs., on or before the 7th of March, 1854, or in default of payment to labor until the fine be paid or the term of sentence expire, and Nos. 3 and 4, six months' imprisonment with labor and to pay a fine of 15 rupees, on or before the 7th of March, on default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. Dick.) The Court see no reason for interference with the sentences passed against the prisoners, petitioners. They observe, however, that the sessions judge has omitted to state whether in his opinion the commitment for dacoity was judicious and sufficiently borne out by the evidence.

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SUMMARY CASES.

PRESENT :

A. DICK, Esq.,

SIR R. BARLOW, BART. and

H. T. RAIKES, Esq., *Judges.*

B. J. COLVIN, Esq., *Officiating Judge.*

UCKHAI BISWAS,

versus

RAMESSUR MULLICK, AND OTHERS.

Jessore.

1854.

April 7.

Case of
RAMESSUR
MULLICK and
others.

A defendant is bound to appear in person to receive sentence before a magistrate, if required, although he has been allowed to answer and defend a charge by attorney.

Baboo Ramruttun Roy was one of many defendants in the above case, who were charged with instigating and committing an attack on Mr. Meare's factory cutchery at Dowlutgunge in Jessore. Ramruttun after being permitted to appear and defend the case by mooktear, was convicted of the charge and summoned by the magistrate, Mr. Toogood, to appear in person and receive sentence; but the sessions judge, on the appeal of the convicted party, and on the strength of an order issued by Mr. Mills in November last, in another case in which Ramruttun was a party, directed that judgment should be delivered in the absence of the party convicted. To this the officiating magistrate demurred, arguing that the law of England, on which the Company's Regulations were based, required the personal attendance of the convicted person to receive sentence. The sessions judge on this referred the question for the orders of the Nizamut Adawlut. The Court, however, instructed the sessions judge to direct the magistrate first, to carry out his orders agreeably to the provisions of the law, Section 2, Regulation X. 1796, and then, after certifying that he had done so, to refer the point at issue for orders if necessary. The magistrate accordingly sentenced Ramruttun to three months' imprisonment and having done so, requested the judge to submit his previous reference to the Court.

The Court having heard the arguments of counsel on the point at issue, collectively held that a defendant is bound to appear in person to receive sentence before a magistrate, and that it should not be passed in the absence of a defendant who has been allowed to answer and defend a charge against him by attorney. The minutes embodying the opinions of the judges severally on the question are given at length.

Ramruttun having appealed to the zillah judge against the magistrate's sentence, the judge was directed to proceed to try the appeal on its merits.

The opinion of the Court at large is given in the following minutes of the judges.

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Mr. A. Dick.—Having now attentively heard and carefully noted all that has been advanced by the learned counsel, engaged to argue the two points before us, I am still of opinion that the accused must be present to receive sentence, whether of acquittal or conviction, in deference to the authority of the court, which has tried the case, and second, that no appeal should be listened to, until such deference and obedience to the authority of the said court has been rendered.

I admit, however, that there is much force in what has been so ably argued, and eloquently and energetically urged by the learned Counsel Mr. Ritchie, viz., that since an appeal is granted on the merits as of right by the legislature, the strong prejudices of our native subjects should not be wholly disregarded, otherwise, the said right of appeal may become utterly valueless. At the same time I cannot consider the principle advanced by him, that when an appeal on the merits is allowed, no sentence should be executed till final decision on the case; for if carried to its utmost extent, it would render not only the authority of the lower courts, but that of the sessions judge almost nugatory and be subversive of wholesome restraint in the due administration of public justice.

Looking then to the youth, the comparative inexperience, and the uncommon difficulties which the younger branches of our judicial service have to contend with, and again at the deep-rooted prejudices of the native community, however unreasonable to us, differently educated and habituated, I think the courts of a magistrate and those below, should be directed to suspend the execution of a sentence of imprisonment, and if corporal punishment, in bailable offences, and especially when the accused has been allowed to appear by agent, mooktear, when the accused at the time of pronouncing judgment against him, declares his intention of appealing, and offers good bail to appear and submit to the sentence, if affirmed in appeal; only one appeal is permitted by our laws as of right, and the appellate court from that of the magistrate and his subordinates is at the same place. No great delay need occur in the passing of the final sentence, and therefore no detriment to the due and speedy administration of justice in such cases while irremediable injury to the feelings of persons, eventually pronounced innocent, will be effectually avoided.

Sessions judges are officers of advanced years, of mature experience, the crimes they have to deal with are of a very heinous nature, and the tribunal to which an appeal lies from their decisions, is at a distance, therefore the reasons adverted to above, do not apply to their courts. They should therefore be left to carry out their sentences, or hold to bail pending an appeal at their own discretion.

Mr. Ritchie with those honorable feelings and with that sound

good taste, inherent in him, spoke with the utmost respect of our junior judicial functionaries, and I do not hesitate to assert, after more than an usual length of practical experience in the judicial line, that no country, no, not even England herself, has ever produced a more intelligent, assiduous, and truly honorable set of officials as a body, and therefore, the only grounds on which I advocate the restriction with regard to them, are their youth, comparative inexperience, the less heinous nature of the crimes they have to try and adjudge, the facility of an appeal and the short period of time that need elapse from their sentence to its conformation or reversal, and the irremediable injury that may ensue from an error in their decisions. I would therefore expunge the construction, No. 941, as subversive of due respect to the authority of the lower court, and issue a Circular Order to the effect above indicated which would fully uphold the authority of those courts, and yet preclude the possibility of an injury irremediable from errors of judgment, without at the same time, in the least degree, tending to weaken practically the forcible administration of criminal justice.

The magistrate can seldom, if ever, be under the necessity of trying any case in which the utmost extent of punishment is not appealable beyond his court, because such cases should be referred to his subordinates.

If he pass a sentence not appealable from him, in cases in which the offence is of a more heinous nature, such case is, I hold, appealable, otherwise the right of appeal would be dependent on the will of the magistrate.

Sir R. Barlow.—The point to be determined is, whether the personal appearance of a party should be requisite to receive sentence, after he has been defended by an agent and convicted by a magistrate.

At the request of some of the pleaders the question, being one of general interest, has been argued before the Court at large.

Mr. Ritchie who has been entertained by Baboo Ramruttun Roy, in the original case, contends, that though in England the orders of a magistrate are final and the practice is to call up a party convicted, and to pass sentence, yet the state of the courts in this country is, an appeal is always allowed here. It never could have been intended that an accused should be debarred of his right of appeal, though not present when sentenced by the magistrate. No Regulation distinctly lays down that sentence shall be passed in the absence of the convicted party, but the Construction 941 shews that the Court did allow of an appeal, though the convicted party evaded judgment of the magistrate.

Further, it is urged, that by the French, American and other laws, sentences are passed in the absence of those affected by them.

Baboo Rampershad contends that there is not a single in-

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stance, save the one mentioned in the reference made to the Court at large, in which the principle of sentencing absentees is recognized, and that the bail given under Regulation IX. of 1807, is for appearance in person or by vakeel. Construction 941 is inapplicable.

After fully considering the arguments of counsel, I am of opinion that the Regulations do not admit of sentence being passed upon a person convicted by the magistrate through his agent. Allusion has been made to foreign codes, but I see no reason for looking at the point now raised, otherwise than with reference to our own laws and the Regulations of Government.

The preamble to Regulation IX. of 1807, sets forth that personal appearance, to *answer* accusations of trivial offences when the agency of a constituted representative may be sufficient, is dispensed with; Section VI. of the law provides measures for causing attendance personally or by vakeel, to *answer* a charge before the magistrate, but there is not a syllable throughout the law which hints at passing sentence through that agent, though he be allowed to defend.

If it had been the intention of the legislature to allow sentences to be passed upon the convicted in his absence, it is reasonable to expect, that some such provision would be found in this place, but there is none.

As to the Construction No. 941, I would remark that the case to which it relates is not analogous to this. It related to a right of appeal to the commissioner and did not involve the point now before us.

A sentence had been passed upon a party by the magistrate, and the commissioner asked whether he could admit an appeal while the magistrate's sentence was evaded.

On an appeal being preferred, a copy of the sentence passed, the objections to that sentence, as well as other data are furnished, such as enable the appellate court to test the legality and justice of the sentence. Suspensions of sentence under such circumstances might be not only expedient but absolutely imperative.

In the case before us, the accused never appeared in person, no sentence was passed on him. The sessions judge could not know whether he had jurisdiction, and if a sentence within certain limits had been passed by the magistrate, he had none. Moreover the sentence so passed by the magistrate, might have been one which only he executed upon the convicted personally.

But the main argument which has been urged on the Court's notice is, that if the party convicted be in attendance before the magistrate, immediate execution of sentence would be enforced. That might be a wrongful sentence, and the disgrace of imprisonment would be incurred, when the result of an appeal might establish the innocence of that party.

The argument may be one against the execution of *any* sentence, whether in trivial or heinous offences, and yet it will not be contended that a magistrate having convicted a person in the latter cases should stay execution of his sentence to grant time for appeal, though that person may have confessed before him to the crime charged, and yet, as often does occur, appeal against the sentence subsequently.

Again the same principle, if a sound one and if acted upon at all, must be carried further and extend from the magistrate's court to that of the sessions judge and also to the Sudder Nizamut, in cases where a special appeal lies to that court, as well as to sessions trials on conviction, thereupon commitments made by the magistrate and sentences would thus be indefinitely suspended. It is to be remarked that when execution of sentence may be suspended it is distinctly laid down by law in Clause 6, Section 4, Regulation IX. of 1831, and nothing less than legislative provisions can in my opinion justify interference or suspension of sentence.

I would observe in regard to the offence, which is the subject out of which the argument has arisen, that the disgraceful affrays which have taken place in the Jessore and other districts will never be put a stop to, if those principally interested, on being summoned, entertain an idea that a magistrate's process may be disregarded, that not only defence may be made but sentence passed through an agent, and that all personal inconvenience and consequences may be for a time evaded. No amount of fine would to such persons be a matter of any moment and it is only upon the wholesome restraint, which the apprehension of personal consequences creates, that any reliance can be placed or any hope entertained of suppressing the end so universally complained of.

Mr. H. T. Raikes.—The point referred to the Court is, whether a person, allowed to appear under Clause 2, Section 6, Regulation IX. of 1807, and defend himself in the magistrate's court by vakeel, is bound to attend personally when sentence is passed upon him, or can claim to have sentence passed in his absence in the presence of his vakeel.

Before the promulgation of Regulation IX. of 1807, one uniform process was observed by the criminal courts, on a criminal charge being preferred before them, that is to say, the accused was apprehended by warrant, and sent in custody to the magistrate.

The preamble of Regulation IX. of 1807, with the view of relaxing this course of procedure in some cases, declares it is expedient that an express and regular provision be enacted for the purpose, and "for dispensing with personal appearance to *answer* accusations of trivial offences, when the agency of a constituted representative may be *sufficient*." It is then by Clause 2,

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Section 6, of the Regulation quoted, that the magistrate, when dispensing with personal attendance, issues his summons to the accused to appear in person or by vakeel on or before a particular day to answer the charge. It appears to me that in all other respects the mode of conducting a trial *previously* in force remained unaltered, and as the presence of the accused at the time of passing sentence was up to that time a necessary consequence of his invariably appearing in person, I feel no hesitation in saying that the provisions of Regulation IX. of 1807, have in no way altered the law or practice of the courts in that respect.

It was not, however, argued by Mr. Ritchie on the part of Ramruttun Roy, that any written Regulation prescribes that sentence shall be passed in the absence of a person who has appeared by vakeel, and the counsel admits that both the English and Scotch Courts under similar circumstance would never dispense with the presence of the accused on such occasions, but Mr. Ritchie argues, that the sentences of the criminal courts at home are final and cannot be reversed, save on a writ of error, whereas sentences passed by the magistrate in this country are open to appeal and may be modified or reversed at the discretion of the appellate court, that it is consequently both reasonable and just that the practice of our courts should differ from those at home, and permit the accused to derive the full benefit of our process, by staying the enforcement of a sentence open to revision before it has inflicted hardship and degradation upon him.

But this reasoning will apply not only to the class of cases under discussion, but to all appealable cases, and as long as it is not deemed expedient to follow out this principle in the case of other sentences, I see no reason why it should act solely in favor of those who are allowed to answer by vakeel.

The Construction No. 941, referred to by Mr. Ritchie, does not touch the point in question; it is not stated how the sentence, there alluded to, was passed, and is no ruling of the court on the present point at issue.

On the point of law referred to the court, I think the analogy of the English and Scotch Courts is sufficient authority to guide us to the conclusion, that the magistrate of Jessore is right in considering that sentence should be passed in the presence of the accused.

If the Court decide that this is the law, I see no good reason for proposing any modification of it. As far as that the wealthy and influential land-holders of the mofussil and others, who are likely to derive advantage from appearing by vakeel are concerned, I consider it best, for obvious reasons, that the authority of the magistrate over them should be in no degree weakened. This, I think, would invariably be the case were the members of this class to consider themselves exempted from the restraint of personal appearance before a magistrate, when the ends of justice

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seem to require it. Much must, of course, be left to the discretion of the magistrate, but while the superior courts are bound to take notice of all official acts done without warrant of law, and the government most prompt to notice with severity all such proceedings on the part of its officers, the public has sufficient guarantee against abuse of power, and the magistrates as a body are, I think, fully entitled to have this confidence placed in them.

Mr. B. J. Colvin.—I consider the only question before the Court to be whether an accused must appear to receive sentence, and, therefore, I make no reference to Construction No. 941.

The appellant in this case had appeared by vakeel, as provided by Clause 2, Section 6, Regulation 9, 1807, to answer to a criminal charge. He was not on bail. It never can be argued that a party allowed to appear by mokhtear is to be in a better position on conviction than a party appearing in person, whether on bail or not.

Now, a party who has appeared in person, if not on bail, can be required (Section 8, Regulation 9, 1807) at any time during the investigation of the charge to give it. This, of course, was applicable to a party who has been allowed, in the first instance, to appear by vakeel, as to one who first met the charge in person, and as it is optional with the magistrate to fix the time for which the accused may be on bail, he is competent to allow of him being on bail, only till such time as he thinks proper, and therefore he may impose a condition that the accused shall appear to receive sentence. Can it, therefore, be argued that a party who has received the indulgence of being at large, not on bail, is of necessity to be excused attendance to receive sentence? Moreover, what is the law with respect to a person allowed to be on bail. He is admitted to bail (Clause 2, Section 9, Regulation 9, 1807) till sentence be passed on him. His presence at the time to receive it is presumed, for the responsibility of the surety is then declared to be at an end, which would not be the case, were the accused at large.

This view of the law is strengthened by reference to Clause 4, Section 3, Regulation 6, 1818, which prescribes the course to be followed by sessions judges. It is there laid down that the personal attendance of parties, held at bail for trial, at the sessions, even although allowed to plead by vakeel, may nevertheless be required whenever requisite.

It has been argued that it may be inferred from our system of appeal in criminal cases, that it was the intention of the legislature to allow of sentences being suspended pending appeal, but I cannot accede to this doctrine. No where in our law is such a course prescribed, but sentence is immediately carried out (except as observed by Sir R. Barlow in the cases under Clause 6, Section 4, Regulation 9, 1831) upon a person in custody, on

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conviction, and there is no reason why the same should not be done upon one, who has been during trial allowed to be at large on bail, or to plead by vakeel.

For the foregoing reasons, I think that the magistrate of Jessore was right in requiring the appellant to appear to receive sentence.

PRESENT :

A. DICK, AND J. DUNBAR, ESQRS., *Judges.*

GOVERNMENT,

versus

MUNGLOO CHAMAR.

24-Pergunnahs.

1854.

CRIME CHARGED.—Wilful murder of his wife Chetia Chamarnee.

Committing Officer.—Mr. E. A. Samuells, magistrate of 24 Pergunnahs.

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CHAMAR.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24 Pergunnahs, on the 8th March, 1854.

Remarks by the officiating additional sessions judge.—The

Prisoner convicted of the wilful murder of his wife and sentenced to capital punishment.

Witness Nos. 1, 2, 3. witnesses enumerated marginally prove the murderous assault, and state that the prisoner sat on the chest of the deceased and pressing down her throat with his left hand, cut her with a *dao* with his right. One of them asserts that he also struck her two blows with a flat, heavy log of wood, which was produced in court and found to weigh upwards of 6 lbs.

The police sergeant while on his rounds, happened to be in the neighbourhood of the prisoner's residence, and being informed that a man was murdering his wife, ran to the spot and succeeded in apprehending the prisoner in the act of escaping from the house. On entering the prisoner's abode he found his wife, the deceased, in a state of insensibility, severely wounded and weltering in her blood. The prisoner admitted then and there, that he had wounded his wife with the intent to kill her and would murder her then, if he were free.

The civil surgeon deposes that he examined the body of the deceased, who died four hours after she had been received into hospital, and found a large quantity of extravasated blood, between the membranes and bone of the *cranium* and the blood vessels of the brain much congested. He also discovered a small punctured wound in the chest and the left knee joint laid open, as if struck by a heavy, sharp instrument. The injury on the head was deemed quite sufficient to account for death.

The witnesses noticed in the margin attest the record of the Witnesses Nos. 7, 8, 9, prisoner's confessions, both before the police and the magistrate. I thoroughly believe the truth of these admissions.

The prisoner denies the charge before this court and makes a rambling, improbable defence, to which he can adduce no proof.

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The inference deducible from it is that his wife drugged him, and that he was not a responsible agent while the effects of the drugging lasted.

The *futwa* of the law officer convicts the prisoner of the wilful murder of Chetia Chamarnee, his wife, and declares him liable to *kissas*.

I concur in the finding and perceiving nothing in the prisoner's case to render him a fit object of mercy, recommend that he suffer the extreme penalty of the law.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick and Mr. J. Dunbar.) Mr. A. Dick.—The prisoner's confessions, and the depositions of the eye-witnesses, who reached the spot at the close of the ferocious assault, disclose a brutal murder on comparatively very slight provocation. The *futwa* of this Court convicts the prisoner of the charge, in which I concur, and I would sentence the prisoner to death.

Mr. J. Dunbar.—The case presents no circumstance of extenuation. In both confessions, the prisoner acknowledged that it was his fixed purpose to take the life of the deceased. I concur in the sentence of death.

PRESENT :

B. J. COLVIN, Esq. *Officiating Judge.*

Shahabad.

GUNGA GURRAREE AND GOVERNMENT.

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versus

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BULLEE BAHALEEA. (No. 1.)

Case of
BULLEE BA-
HALEEA.

CRIME CHARGED.—Highway robbery, attended with beating and wounding, in which property to the amount of Rs. 93-1-6 was plundered.

A case of Committing Officer.—Mr. J. T. Worsley, deputy magistrate of Sasseram.

highway robbery unaccompanied with an attempt to commit murder, or with wounding such as to endanger life, should not be referred for the orders of the Nizamut Adawlut.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 10th March, 1854.

Remarks by the sessions judge.—The prosecutor deposes that, on his way home from Moorshedabad, he met the prisoner and having formed an intimacy with him, the two travelled together for twelve days; one evening, having reached *kurroundia nullah*, they were overtaken by a heavy storm, and night drawing on, they seated themselves under the bridge and fell asleep.

About 10 o'clock at night, the prisoner seized the prosecutor by the neck, and throwing him down to the ground, wounded him on the neck, shoulder and hand, with a sword.

The prosecutor called out, but was silenced by a handful of dust, which the prisoner threw into his face; the prisoner then made away with the articles from No. 1 to No. 20 to the value of Rs. 93-1-6, leaving the prosecutor prostrate on the ground.

The prisoner confessed before the magistrate to the effect that he had a quarrel with the prosecutor on the road, respecting the adjustment of some accounts; that the prosecutor first struck him with a sword, and that he then in anger wounded the prosecutor and carried off the property above alluded to.

Witnesses, Nos. 1 and 2, state that the prisoner had lodged in their house for several days, giving them the articles now before the court to be kept, but that when the darogah arrived to investigate the case, they delivered the whole of the things to him. The other witnesses identify the articles from No. 1 to No. 20, to be the property of the prosecutor.

The prisoner pleads not guilty.

No other defence is attempted.

The *futwa* convicts the prisoner guilty of highway robbery with wounding and declares him liable to "*accoobut shadeed*."

Under all the circumstances of the case, I recommend, with reference to the number and situation of the wounds, and the instrument with which they were inflicted, that the prisoner be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The charge is proved against the prisoner by the evidence of the prosecutor, by his own confessions before the police and deputy magistrate, and by the finding of the property which was concealed. The sessions judge need not, however, have referred the case, as the prisoner was not charged with highway robbery accompanied with an attempt to commit murder, nor does it appear that the wounding was such as to endanger life. He should have sentenced the prisoner himself under Cl. 5, Sec. 8, Reg. 17, 1817. I accordingly do not pass a sentence beyond what is provided by that law, viz. 14 years' imprisonment with 2 years additional, in lieu of stripes, altogether 16 years' imprisonment with labor and irons in banishment.

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Case of
BULLEE BA-
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PRESENT;

J. DUNBAR, Esq., Judge.

JOODISHTĒER MALO AND GOVERNMENT,

versus

Nuddea.

GOBINDO MALO.

1854.

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Case of
GOBINDO
MALO.

CRIME CHARGED.—Wilful murder of Suroop Malo, father of the prosecutor, Joodishteer Malo.

Committing Officer.—Baboo Ishur Chunder Ghosal, deputy magistrate of Santipore.

Tried before Mr. Sconce, sessions judge of Nuddea, on the 20th March, 1854.

Remarks by the sessions judge.—The death of Suroop Malo, arose from a sudden quarrel. The prisoner, Gobindo Malo, and his party, suspected Suroop and his son, Joodishteer, the prosecutor, of pillaging the fish from the brush wood, which they had set for catching fish by the river-side. About 8 o'clock in the evening of Friday, the 25th November, 1853, corresponding with 11th Aghun, Peyaree, wife of Suroop, and Budun's wife, began disputing about this, each talking at the other, from her own house. This going on, Gobindo Malo, Nipal and Budun ran up from the river-side, which is described as being about a beegah off. Joodishteer came out of his own house, where he was sitting, to the *oathan* to face them; and shortly after, being assaulted by Gobindo and Budun, he was followed by his father, Suroop. Now the three men turned upon Suroop; Nepal felled

See depositions of Joodishteer, Mohesh, Kaseenath.

him to the ground by a blow on the head with a long and weighty bamboo: when down, Suroop was struck with a long stick, called "*akrah*," on the left side by the prisoner Gobindo and was kicked by Budun. Suroop immediately expired.

The part which the prisoner, Gobindo Malo, took in this affair, is proved clearly by the three witnesses, named in the margin, and the guilt of Gobindo is corroborated generally by the other witnesses for the prosecution. The other two men,

Joodishteer, Mohesh
and Kaseenath.

Nepal and Budun, have not been arrested.

The bamboo, with which Nepal inflicted his blow, is above five feet long, and at the thick end $7\frac{1}{2}$ inches round: the *akrah* used by the prisoner, Gobindo Malo, is $8\frac{1}{2}$ feet long and $4\frac{1}{2}$ inches round at the thicker end.

The civil assistant surgeon, Dr. Archer, who held a *post mortem* examination of the body of Suroop, states that the blow sustained on the head was sufficient to place the man's life in

Prisoner convicted of culpable homicide, sentenced to five years' imprisonment.

imminent danger, but that he died from the blow on his side, which fractured two ribs and ruptured Suroop's spleen: the spleen was very much enlarged. I asked Dr. Archer, to distinguish, if he could, between the effects of the blow on the side as such, and of the previous disease of the spleen; but the witness found it difficult to specify exactly and separately the effects of these several causes; he could only point to the severity of the blow by which two ribs of the deceased were broken, and remark that even a healthy spleen might have been ruptured, if the broken bones had been driven on it.

In his defence, prisoner had nothing to adduce, he said he was ill at home: he named no witness.

The law officer convicts Gobindo Malo as an accomplice (*shureek*) in the culpable homicide of Suroop Malo. I think he is fully convicted by the evidence of being a principal in this crime: the death of Suroop immediately followed the blow, which Gobindo Malo struck; and it would be an erroneous judgment, I think, to assign to him a less shade of guilt than what his conviction for the culpable homicide of Suroop Malo implies. There is no reason at all to doubt that the prisoner, by the blow of an *akrah*, broke two of deceased's ribs and ruptured his spleen.

I would recommend the prisoner, Gobindo Malo, to be sentenced to five years' imprisonment in labor and irons. Suroop was not known by his family to have been ill; the violence used by the prisoner was of a very aggravated kind, and it should be remarked that he brought with him from the river side, the instrument of his fatal assault. The bamboo used by Nepal he picked up in the prosecutor's *oothan*.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The finding of the law officer does not appear to me, to imply a lighter shade of guilt than that which belongs to a conviction of culpable homicide. It refers rather to the undoubted fact, that there were three persons concerned in the violence, which caused the death of the deceased. As being one of three, who used that violence, the law officer calls him an accomplice. I concur in the conviction of culpable homicide, and in the sentence proposed by the sessions judge.

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Case of
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PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

SUJJAD ALLY.

Patna.

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Case of
SUJJAD ALLY

A charge of perjury cannot be based upon contradictory statements made upon oath before a darogah, the second being in withdrawal of an accusation made in the first.

CRIME CHARGED.—Perjury in having on the 22nd December, 1853, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before Ramsuhay darogah of the Chowk Shikarpoor thannah in the city of Patna, that my father's name is Hydur Bux residing in Soonmey pergunnah, Sandah Shaikh Abdool Azeez is own brother to me and was formerly a servant of Mohommud Reza. Yesterday, at about 9 P. M. Mohommud Reza told Abdool Azeez, to go into his zenana apartments to prayers. Accordingly he went into Mohommud Reza's house. Ikbal Ally came from his own house and went into the woman's apartments of Mohommud Reza. Immediately after this Abdool Azeez's voice was heard calling out. I am killed, I am killed. After which no further sound came from within; I have searched for Abdool Azeez to-day but have not found him, I suspected that Mohommud Reza and Ikbal Ally have killed Abdool Azeez, I therefore charge them with the murder, and require that the house should be searched for the body of Abdool Azeez. And in having again on the same day, the 22nd December, 1853, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the said Ramsuhay darogah, that, in fact Mohommud Reza and Ikbal Ally have not killed my brother. In consequence of an intrigue between the said Abdool Azeez and Musst. Oomdah, sister of Mohommud Reza the said Mohommud Reza took my brother, Abdool Azeez into the woman's apartments of his house on the pretext of praying and there beat him, Abdool Azeez striking him in return ran out another way and said to me, I am going to the house of Gopinath or to Gungapershad, do you go and lodge a complaint at the thannah against Mohommud Reza and Ikbal Ally for having murdered me; in consequence I caused to be taken down my first deposition which is false. I no longer maintain my charge against them or desire the search of the house. Abdool Azeez has gone to Soonmey.

CRIME ESTABLISHED.—The same as Crime charged.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 23d January, 1853.

Remarks by the sessions judge.—The prisoner in this case pleaded guilty to the charges on the indictment, and they are further

entirely corroborated by the depositions of the witnesses. One witness No. 1, stated before the magistrate that the prisoner was subject to fits of insanity and witnesses Nos. 1, 2 and 3 repeated the same story before this court, but it appears to be without any foundation in truth, at all events he is proved by the evidence as well as by his entire recollection and admission of the facts with which he is charged to have been of sound mind at the time that he perjured himself, and he can offer nothing in extenuation of the false complaint of murder which he deliberately made against the parties Mohummed Reza and Ikbal Ally at the thannah on oath, I reject the defence as entirely false and convict the prisoner of perjury. The *futwa* of the law officer concurring, he is accordingly sentenced to five years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present Mr. B. J. Colvin.) The second statement before the darogah should not have been taken on oath, as it was a withdrawal of the charge against Mohummed Reza and Ikbal Ally contained in the first. Hence its being contradictory of the first cannot be taken into account. I acquit the prisoner and direct his release.

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Case of
SUJJADALLY.

PRESENT :

A. DICK, Esq., *Judge*.

GOVERNMENT AND MUDHOO MANA,

versus

MUTHOOR SEN (No. 1,) BIPRO UDHIKAREE (No. 2, APPELLANT,) MOOCHEERAM DHOPA TANTEE (No. 3,) OODOYCHAND CHUCKERBUTTY (No. 4, APPELLANT,) NOBIN MYTEE (No. 5,) NARAIN MANA (No. 6,) GUDADHUR PATTERN (No. 7,) PREMCHAND KORUNGA (No. 8,) MUSST. PELEE (No. 9,) RADHOO SEN (No. 10,) MUSST. POARNIMAH* (No. 11,) NARAIN SEN (No. 12,) AND MUSST. SOORJEE (No. 13.)

Midnapoor.

1854.

April 5.

Case of
BIPRO UDHIKAREE and
others.

CRIME CHARGED.—1st. count prisoners, Nos. 1 to 8, dacoity in the house of Oodoy Chand Pundah, master of the prosecutor, Mudhoo Mana, and plundered therefrom property to the value of Rs. 1,023-11-9; 2nd. count, aiding and abetting in the above dacoity; 3rd. count, having in their possession, plundered property, knowing it to have been so acquired. Prisoners Nos. 9, 10, 12 and 13, having in their possession plundered property, knowing it to have been so acquired.

Two prisoners
out of a number
convicted
by the sessions
judge for dacoity
appealed.
Appeal rejected.

* Released by the lower court.

1854.

April 5.

Case of
BIPRO UD-
NIKAREE and
others.

CRIME ESTABLISHED.—Nos. 1 to 8, dacoity with plundering and having in their possession plundered property, knowing it to have been so acquired. Prisoners Nos. 9, 10, 12 and 13, having in their possession plundered property, knowing it to have been so acquired.

Committing Officer.—Mr. G. Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 7th Jan. 1854.

Remarks by the sessions judge.—The prisoners plead not guilty. On the night of the 27th September, the house of Oodoy Pundah, the master of the prosecutor, was attacked and plundered by a gang of dacoits of property to the value of Co.'s Rs. 1,023-11-9. By the assistance of witness No. 65, Palaram Rana, a clue was obtained, which led to the arrest of the prisoner, No. 5, Nubeen, in the act of making his escape from his house with some of the stolen property in his possession. His confession led to the apprehension of the other prisoners. The prisoners Nos. 1, 2, 3, 4, 9, 10, 11, 12 and 13, confessed in the mofussil and before the magistrate; the first four stated that they had committed the robbery, and the five others that they had given up the stolen property to the police when required to do so. The prisoners, Nos. 5, 6, 7 and 8, confessed in the mofussil, but denied their guilt before the magistrate. In this court, prisoners, Nos. 2 to 8, inclusive, plead an *alibi*, which they fail to establish. The confessions are clear and circumstantial and fully corroborated by the evidence for the prosecution, the truth of which there is no reason whatever to doubt. The prisoner, No. 1, Muthoor Sen, is a confirmed dacoit, and seems on the present occasion to have been the instigator of the robbery, and the leader of the gang. He was only released from jail in 1850 after having undergone a sentence of 7 years' imprisonment for dacoity. The prisoner, No. 13, Soorjee, was also released in 1847, after having undergone a sentence of five years' imprisonment for the same crime as that on which she is now arraigned; most of the other prisoners are suspicious characters, who have been in custody before on a charge of gang robbery, but acquitted for want of evidence. There are good grounds for presuming that they are members of an organized gang, which infest the eastern part of this district, whose movements are controlled by experienced leaders, one of whom, as above stated, is the prisoner, No. 1. The prisoners are, in my opinion, guilty of the charges preferred against them and are sentenced accordingly as shewn in the statement.

Sentence passed by the lower court.—Prisoner No. 1, 14 years and 2 years more in lieu of corporal punishment, total 16 years' imprisonment with labor in irons in banishment. Prisoners Nos. 2, 3; 4, 5, 6, 7 and 8, to 7 years, and 2 years more

in lieu of corporal punishment, total 9 years' imprisonment, each with labor in irons. Prisoner No. 9 five years' imprisonment with labor suitable to her sex; prisoners, Nos. 10 and 12 five years' imprisonment, each with labor in irons; and prisoner No. 13, to 7 years' imprisonment with labor suitable to her sex; and all the prisoners to pay a fine under Act 16 of 1850, jointly and severally, of Co.'s Rs. 848-6-6.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The Court see no reason for interference with the sentences passed against the prisoners No. 2, Bepro Udhicaree and No. 4, Oodoy Chand.

1854.
April 5.
Case of
BİPRO UD-
HIKAREE and
others.

PRESENT :

J. DUNBAR, Esq., *Judge.*

GOVERNMENT AND OODOY CHUNG,

versus

TEELUCK CHUNG TAGADGEER.

Rajshahee.

CRIME CHARGED.—Wilful murder of Bhaggobuttee Awrut.

Committing Officer.—Mr. F. L. Beaufort, joint-magistrate of Pubna.

1854.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 15th March, 1854.

April 6.

Remarks by the sessions judge.—The reason for this reference is that I consider the prisoner's offence to amount to murder, and that under the *futwa*, which is one of *acoobut*, he is deserving of much more severe punishment than I am competent to award.

Case of
TEELUCK
CHUNG TA-
GADGEER.

The circumstances are briefly as follow : The prisoner had been for some time in the service of a Mahajun in the Dinagepore district, and had left his wife, a girl of thirteen years of age, to reside with his sister-in-law (witness No. 2,) and returning home into his sister-in-law's house, he, on the night of the occurrence, had retired with his wife to sleep when the sister-in-law, as well as her son-in-law (witness No. 1,) heard blows being given, and on going to the prisoner's apartment learnt from him that he had struck and killed his wife.

Prisoner con-
victed of wil-
ful murder and
sentenced to
transportation
for life, the
crime having
been commit-
ted from feel-
ings of jea-
lousy.

In the sessions court, he pleaded not guilty to murder, but admitted he had struck the deceased over the ear, and that she had died from the effects of the blow.

The witnesses to the *sooruthal*, however, depose to a wound under the left eye, and marks of strangling on the neck, and the sub-assistant surgeon, Mr. Ellis, who held a *post mortem* examination on the body, distinctly deposed that the deceased

1854.

April 6.

Case of
TEELUCK
CHUNG TA-
GADGER.

had been strangled; that the blow under the eye could not have caused her death; and that there was no appearance of a blow having been inflicted over the ear, or near the temple.

The prisoner admitted both his mofussil and fouzdayr confessions, and in the one made before the joint-magistrate stated that the deceased *herself* put a rope round her neck, and wanted to hang herself, and thus had left a mark.

I, however, am of opinion, with the law officer that the prisoner, and not the deceased, *must* have used a rope, or his hand to strangle her, and the appearances on the pallet they had been lying on leave no doubt in my mind, that for some cause not ascertained, or divulged by the prisoner, *he* must have first knocked her down, and then strangled her.

His statements throughout have been that the deceased wanted to go back with him to Dinagepore, and laid hold of his clothes, when he refused to consent to her doing so. Now if so the assault made on her was totally inexcusable.

The joint-magistrate seems to consider that the prisoner suspected the fidelity of his wife, but of this there is no proof; and the person with whom she appears to have been somewhat familiar was a boy, only ten years of age, and three years younger than herself, and any intimacy or acquaintance with him (if it existed) never could have caused such furious jealousy in the prisoner's breast.

The latent cause for the murderous assault has not, I repeat, been divulged, and giving the prisoner the benefit of any doubt, I consider him guilty of a most brutal and fatal assault on his wife, and would propose that he be sentenced for aggravated culpable homicide to a long period of imprisonment, extending even to life.

He is a tall powerful man, and as the deceased had one lung diseased, any blow from him *must* have been dangerous, and from his own admissions be dealt the death-blow.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The sessions judge at the commencement of his report states, that he considers the prisoner's offence to amount to murder, but he proposes, at the close, that he should be sentenced for aggravated culpable homicide. The *futwa* of the law officer convicts the prisoner of murder, and it does not appear to me, that conviction of the less heinous offence can be declared upon the evidence. The evidence of the three principal witnesses shews, that the prisoner some days previous to the murder, had heard that his wife had been unfaithful, and that he had been told of her light conduct at the *ghaut* on the very day of the murder. There is strong reason to believe, that the prisoner committed the murder from feelings of jealousy; but there is no evidence to shew that the woman had actually been unfaithful. The prisoner admitted to those persons, who first

went to the room in which he and the deceased had been sleeping, that he had murdered her. He admits this even now, but endeavours to show, that death was caused by two blows on the head, given as he says for correction. The state of the bedding, however, and the marks of strangulation on the body leave no room to doubt, that the violence, which deprived the deceased of life, was of a different kind. I convict the prisoner of murder, and making allowance for the state of mind induced by the reports which he found in currency about his wife, on his return home, I sentence him to imprisonment for life in transportation.

1854.
April 6.
Case of
TEELUCK
CHUNG TA-
GADGEER.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

AMEER BEG.

Cuttack.

CRIME CHARGED.—Perjury, in having, on the 11th day of November, 1853, deposed under a solemn declaration administered in lieu of an oath, under the provisions of Act V. of 1840, before the sessions court, that the Soobhan Khan who wrote the *rahin tumussook*, the document marked A,* alleged to have been executed by Meer Deedar Allee in favor of Sheikh Khedun, on the 21st Dhunoo, 1258, corresponding with the 3rd January, 1851, and to which the prisoner's name is affixed in the margin as witness, was a foreigner; and that it was not written by Soobhan Khan also called *Bholoo*—the said deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case, Government *versus* Sheikh Khedun charged with fraudulently issuing and publishing as true the above cited fabricated *rahin tumussook*.

1854.
April 8.
Case of
AMEER BEG.
The prisoner was convicted of perjury.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. R. P. Harrison, magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 19th December, 1853.

Remarks by the sessions judge.—The charge fully explains the particulars of the perjury, and it only appears necessary to state in addition thereto that the *rahin tumussook*, the document marked A, therein alluded to, was proved in the trial of Sheikh Khedun, prisoner, No. 4, of statement No. 6, for November, to

* Not published.

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April 8.

Case of
AMEER BEG.

be a forgery, and that it was also therein proved that Soobhan Khan, who wrote the said *rahin tumussook*, was not a foreigner, and that he was the identical Soobhan Khan, witness No. 1, in the present case.

Soobhan Khan, witness No. 1, a resident in the town of Cuttack, deposed that he wrote the *rahin tumussook*, the document marked A, at the request of Sheikh Khedun, in the absence of Meer Deedar Allee; and document No. 5, being a paper in the hand-writing of the said witness, confirms his statement.

Meer Deedar Allee, witness No. 2, deposed that he neither caused the document, marked A, to be written by a foreigner of the name of Soobhan Khan nor any other Soobhan Khan, and that the said document was a forgery.

The record of the forgery case, in which Sheikh Khedun was convicted, and the general circumstances attending the *rahin tumussook*, further fully prove that the Soobhan Khan, who wrote the document, was the witness, No. 1.

Kasseenath Dass, witness No. 3, deposed to the fact of the prisoner, Ameer Beg, having made the false deposition before this court.

The *futwa* of the law officer convicts the prisoner, Ameer Beg, of the crime charged, on violent presumption, and fully concurring in the conviction, the court sentenced him to three years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I consider the perjury charged to be proved. It is clear that the mortgage bond was written by Soobhan Khan, the witness referred to, and not by Soobhan Khan, a foreigner. The latter being a foreigner could not have written it in the Oorya character and language, I uphold the conviction and sentence and reject the appeal.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT,

versus

FYZOODDY MOOLLAH.

Jessore.

1854.

April 8.

Case of
FYZOODDY
MOLLAH.

Prisoner con-
victed of per-
jury and sen-
tenced to three
years' impris-
onment. Ap-
peal rejected.

CRIME CHARGED.—Perjury, in having on the 26th March, 1853, or 16th Choitro 1259, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the magistrate of Jessore that prisoner, Buksh Sheikh, made his voluntary confession before the darogah about the commission of the dacoity in the house of Ram Needhy Koondo and it was taken down in writing in his presence, and that no violent measure nor any interference on the part of any person had been permitted: and in having on the 19th May, 1853, or 7th Joishto 1260, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the sessions judge of Jessore that Druz Meer Burkundaz extorted confession from the prisoner, Buksh, by blows, kicks and slaps, such statements being contradictory to each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. C. S. Belli, magistrate of Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 22nd June, 1853.

Remarks by the sessions judge.—Perjury, the crime charged is clearly proved from the evidence for the prosecution.

The two statements are contradictory of each other on a point material to the issue of the case.

The jury gave a verdict of guilty in which I concur. I sentence the prisoner to three years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoner in his appeal denies having given contradictory depositions, and avers that he gave the same evidence before the magistrate and the sessions. The depositions, however, speak for themselves, and there can be no doubt of their inconsistency, I see no reason to interfere with the sessions judge's finding and order.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

SHEIKH KHEDUN.

Cuttack.

1854.

April 8.

Case of
SHEIKH KHEDUN.

CRIME CHARGED.—Fraudulently issuing and publishing as true and attempting to give effect to a false and fabricated deed, knowing the same to be false and fabricated, the deed in question being that marked A, and filed with the record.

CRIME ESTABLISHED.—Fraudulently issuing and publishing as true and attempting to give effect to a false and fabricated deed, knowing the same to be false and fabricated. The deed in question being that marked A, and filed with the record.

Committing Officer.—Mr. G. C. Fletcher, joint-magistrate of Cuttack.

Held by a majority of the Court that a judge may, *proprio motu*, send parties for trial to the magistrate on a charge of forgery under Act I. of 1848.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 11th November, 1853.

Remarks by the sessions judge.—The prisoner Sheikh Khedun instituted a suit on the 15th of February, 1851, against Meer Deedar Allee to recover Rs. 40, the amount of a *rahin tumussook*, the forged document marked A, in the court of the Moonsiff of Cuttack, who dismissed the suit and pronounced the document to be a fabrication, but not satisfied with the Moonsiff's decision, Sheikh Khedun appealed to this court, and on the 27th of July, 1853, the appeal was dismissed and the decision of the lower court affirmed, and the appellant made over to the magistrate to be put on his trial for forging and uttering the *rahin tumussook* marked A.

The proof of the document being forged, consists in the evidence of Meer Deedar Allee witness No. 7, that he did not execute the *rahin tumussook*, and that a complaint lodged by him against the prisoner for dispossessing him from the identical land referred to in the mortgage bond (which is situated in a Khas mehal the property of Government), was pending in the collectorate at the very time the said bond is alleged to have been executed; the evidence of Soobhan Khan witness No. 1, to the effect that he wrote the bond at the request of the prisoner, in the absence of Deedar Allee, the corroboration of the statement of the said Soobhan Khan, by the similarity of other papers in his hand-writing, to the writing in the bond, the manifest forgery of the signature of Deedar Allee affixed to the bond, and its dissimilarity to its other signatures; and lastly, the denial of the prisoner that the above named Soobhan Khan wrote the bond, though he in the first place cited him as wit-

ness to depose that he was the writer of it, and his assertion, that a Soobhan Khan a *purdasee* or foreigner, who was not forthcoming, and who had not been at Cuttack from the date of the document, wrote it, it being a moral impossibility that a foreigner could have written it, as it is in the Ooriah character.

The prisoner pleaded not guilty, and cited a number of witnesses to prove that Deedar Allee executed the bond and borrowed the money, but their testimony was manifestly as false as the bond.

The *futwa* of the law officer which accompanies convicted the prisoner Sheikh Khedun of the crime charged, and fully concurring therein, I sentenced him to three years' imprisonment and to pay a fine of Rs. 200 within one month, or to undergo the imprisonment in labor without irons until it was paid.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin). The majority* of the Court having ruled that the commitment was good in this case, I now proceed to dispose of it on its merits.

The sessions judge has stated, as one of his grounds of conviction, that there was a suit pending in the collectorate for the identical piece of ground referred to in the mortgage bond. Having compared the plan of the ground in the collectorate case, with the particulars of the land in the bond, I am of opinion that they relate to different, although adjoining plots of ground, and this is said to be the case by the prisoner in his defence.

Nevertheless I think that the fact of that case, having been instituted, tells greatly against the prisoner, for it is very unlikely that when the parties were litigating in the collectorate, they would have such a transaction as one of mortgage between them. The prisoner says he was ignorant of the institution of that suit on the date of the mortgage bond, i. e. 3rd January, 1851. This may be true, for notice of it was only issued on the 21st of that month, but it is very improbable that the prosecutor, who had sued him in the collectorate on the 26th December, 1850, would have borrowed money from him on the 3rd January following. The other grounds assigned by the sessions judge for conviction are valid and good. I therefore see no reason to interfere with the sentence. I reject the appeal.

1854.

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Case of
Шейх Кхе-
дун.

* Mr. B. J. Colvin's note, dated the 6th February, 1854. Requesting the opinion of the Court at large as to whether the trial of Sheikh Khedun is valid or not.

I have the case now before me on the appeal of the prisoner, but before going into the merits of the case, I beg to have the opinion of the Court at large as to whether the trial is valid or not.

1854.

April 8.

Case of
SHEIKH KHEDUN.

The sessions judge at Cuttack reported the case as follows :—

"The prisoner Sheikh Khedun instituted a suit on the 15th of February, 1851, against Meer Deedar Allee to recover Rs. 40, the amount of *rahin tumusook*, the forged document marked A, in the Court of the Moonsiff of Cuttack, who dismissed the suit and pronounced the document to be a fabrication, but not satisfied with the Moonsiff's decision, Sheikh Khedun appealed to this court, and on the 27th of July 1853, the appeal was dismissed and the decision of the lower court affirmed, and the appellant made over to the magistrate to be put on his trial for forgery and altering the *rahin tumusook* marked A."

Both from the judge's roobakaree dismissing the appeal, and from that remitting the case to the magistrate for investigation under Section 2, Act 1, 1848 it is apparent that no charge of forgery was preferred by the defendant, respondent, in respect to the *rahin tumusook* offered in evidence against him, but that the judge *motu suo* directed the institution of criminal proceedings against the plaintiff appellant.

It seems to me that in the absence of a complaint from the defendant, respondent, impugning the deed as a forgery and requiring an investigation into the matter, the judge should not have sent the case to the magistrate. But before acting on this view, I request the opinion of my colleagues, as Mr. Dick and I differed on the point in a case before us on the 4th instant.*

I propose that the matter should be argued by the Government pleader, under the orders of the superintendent of legal affairs, and by any other pleader whom the Court may appoint, under the rules 4 and 5 of Circular Order, 31st May, 1852, No. 85, that the point may be judicially determined.

OPINION BY THE COURT AT LARGE.

Messrs. Dick and Dunbar. To interpret a law, the wording of which is considered indistinct and disputed, we must first look to the intent of the legislature in enacting the law in question. Before the enactment of Act 1, 1848, magistrates were empowered to receive charges preferred by parties of forgery against their antagonists in civil suits, criminal cases and proceedings. To stop such charges so preferred, Act 1, 1848 was enacted, and the law regarding charges for forgery was assimilated to charges for perjury and subornation of perjury. Now in cases of perjury and subornation of perjury, the Court have always been considered to be empowered of themselves, to institute proceedings to ascertain that there is ground for sending a party, charged with either of those crimes, to the magistrate for committal. This much for analogy.

Now to the actual wording of the law. If the courts were not empowered to originate enquiry of themselves into the guilt of parties before them of forgery, and could enter upon such enquiry only on an adverse party preferring the charge, the law would have directed the court to take a recognition from the *accuser*, as well as from each of the witnesses. No mention of the *accuser* in the section in question, section 2, of Act 1, 1848, is strongly presumptive, that no *accuser* other than the court itself was contemplated by the legislature. This is further apparent to us from the concluding cautionary provision on the said section, "that nothing herein contained shall be construed to affect the powers vested in sessions judges in cases of forgery by section V. Regulation II. 1807." That section 5, of Regulation II. 1807, declares, "whenever a person attending a court of circuit may be considered by the judge of that court to be guilty of subornation of perjury, or of forgery, it shall be competent to the judge to direct the magistrate to commit the person so charged for trial before the

court of circuit. Here is again no word of an accuser^r though the word charge is used ; it is sufficient if the judge consider the party guilty.

Indeed the whole object of the laws regarding accusations of forgery and perjury, committed in civil causes, and criminal causes, and other judicial proceedings, appears to us to prevent parties interested in such causes, cases and proceedings from wantonly charging each other and at the same time, to provide a means of bringing real delinquents to justice by empowering the judge, or other presiding officer, to notice and inquire into any instances of guilt which may occur before them, and to cause them to be regularly brought to trial by the criminal courts in due course.

We are of opinion that the legislature never could have intended to prevent the courts from all and any interference, even when they are perfectly satisfied that a case of forgery is before them, and that they must not notice it, unless a charge on oath be specifically preferred to them by an adverse party who might from a variety of motives be induced to refrain from prosecuting.

We hold that the commitment is valid.

Sir R. Barlow.—In my view of the provisions of Act 1 of 1848, where *there may appear to the court* sufficient grounds for sending, *for investigation* to the magistrate, a charge of forgery or of the offences in section I, *the court shall send* the parties with the evidence, &c., relevant to it, to the magistrate who shall receive such charge and deal with it in usual course, either acquitting the party if he thinks him not guilty, or committing him, if otherwise.

Nothing is said of the necessity of a *private individual* first charging his opponent in the civil court with forgery, to enable the civil authority to take cognizance of it. The magistrate having the whole case before him would proceed as public prosecutor, which he is made by section 2 in all such cases arising *out of his own court*, and notwithstanding the judge might have considered, *primā facie*, that forgery had been committed, release the accused.

If it had been the intention of the legislature that the charge was to be preferred by the alleged injured party, the law would distinctly have so declared, but the discretion is left *with the court*, whenever there may *appear to it* sufficient ground to send the case for investigation to the magistrate, there to be completed and disposed of by him as other cases in due course.

In a few words, the law as I read it is, that a magistrate shall only recognise forgery, &c. alleged to have been committed in *other courts than his own*, through authorities presiding in the courts where the case in which the forged deed is filed is pending ; for Section 1, of the law prohibits his cognizance or preferment of charges by parties direct, and admits the magistrate taking them only when sent, as provided by Section 2, in which section I see no provision that a party alleged to have been injured *must first* come forward before the civil authority ; to bear out the argument on the other side, it would be necessary to add much to the provisions of the law which is not to be found in it.

Mr. H. T. Raikes.—The question before us is whether a civil court is authorised, under Act I. of 1848, to originate a charge of forgery against parties before it *proprio motu*, and send the accused persons to the magistrate for trial.

Although the legislature had imposed restrictions in the criminal courts regarding the exception of charges of perjury and subornation of perjury against parties, or witnesses in civil courts clause 2, section 14, Regulation XVII. of 1817, no such prohibition existed against receiving charges of forgery, preferred by parties to civil suits, regarding the documents offered in evidence until the promulgation of Act I. of 1848. By that Act magis-

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Case of
SHRIKH KHEDUN.

1854. trates are prohibited receiving such charges, except as provided in Section 2, of the Act.

April 8. That Section declares "that in cases pending before any civil court in which there may appear to the court sufficient grounds for sending the magistrate a charge of any of the offences specified in Section 1, of this Act, the court shall send the party or parties accused, in custody to the magistrate, together with the evidence and document relevant to the charge, and take a recognizance from each of the witnesses, who have given such evidence, to appear before the magistrate who shall *thereupon* receive such charge and proceed with it in the usual course."

Case of
श्रीराम कृष्ण-
दुन.

The words of the Act appear to me so plain and unambiguous, that I cannot entertain the least doubt as to the meaning of the legislature in this law.

It, of course, supposes the case of a party to a suit who is anxious to prefer a charge or accusation of forgery, &c., against another, and would at once do so in the criminal court, were the magistrate competent to entertain it, but as the act in question prohibits his taking his charge directly before the tribunal competent to deal legally with it, he follows the course laid down by this act and prefers it to the judge, before whom the suit is pending, and if the judge considers there are grounds for sending the charge, thus brought before him, for investigation, he forwards the accused in custody and the documents, &c., to the magistrate, who, the law then declares, shall *thereupon* receive the charge and proceed with it in usual course.

The object of the law is clearly to prohibit the magistrate from receiving a charge on the mere motion of the party injured, but directs him to receive it when the judge sends it before him.

But the reception of the charge by the magistrate, when sanctioned by the judge's proceedings, is not on the ground that such charge has been originated by the judge himself from the proceedings in his court, but on the ground that the charge made by the party complaining has come before him in the channel pointed out by the law, and is therefore cognizable by him, and I entertain no doubt that the act is intended merely to impose such restriction on accusations of this nature, as will prevent vexatious prosecutions and allow those only to go forward which the court, before whom the document has been submitted, deems necessary for the ends of justice. I am, therefore, of opinion that the judge cannot *proprio motu*, send up charges of this nature for investigation by the criminal court.

Mr. B. J. Colvin.—I am of opinion Act I. of 1848, does not dispense with anything that was necessary before. Had the magistrate been competent of his own authority to deal with a case of forgery, arising out of a civil suit, he would have required a charge on oath, but the law, from motives of policy, has removed from the magistrates the power of receiving such charges. They are directed to be preferred to the civil authority before whom the civil proceedings may be pending, who must first inquire if there be sufficient grounds for them and if satisfied that there are, he conveys his sanction to their investigation by the magistrate.

There is no change made by Act I. 1848, except as to the authority for receiving charges, but they are to be preferred as criminal charges, are required to be on oath, such oath to be taken in cases like the one under consideration before the judge instead of before the magistrate.

Hence in the case, which has given rise to the present argument, I consider that the judge of Cuttack acted improperly in sending the case to the magistrate without a charge on oath.

The proceedings should therefore be quashed.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND MUSST. SOHAGEE BEWA,

versus

KENARAM MUNDUL (No. 19,) KANOORAM ALIAS
KANYE (No. 20, APPELLANT) AND BHUGERUTH BA-
ROYE (No. 21, APPELLANT.)

Dacca.

CRIME CHARGED.—Prisoner No. 19, culpable homicide of Tenye Mundul son of Musst. Sohagee, prosecutrix, by beating him with a *luggee*, from the effects of which he died the next day. Prisoners Nos. 20 and 21; 1st count, being accessory to the above homicide after the fact; 2nd count, privity to the case.

1854.

April 8.

Case of
KANOORAM
alias KANYE
and others.

CRIME ESTABLISHED.—Prisoner No. 19, culpable homicide of Tenye Mundul, Nos. 20, and 21 privity to the culpable homicide of Tenye Mundul.

Committing Officer.—Mr. W. H. Brodhurst, officiating joint-magistrate of Fureedpore.

The offence
of the prison-
ers held to be
"privity" un-
der the cir-
cumstances.

Tried before Mr. C. T. Davidson, commissioner with powers of a sessions judge, on the 3rd February, 1854.

Remarks by the commissioner.—The prosecutrix states, that her son was in service with one Cheedam and that, in Assin last, his brother came and told her son was ill of fever. She went and found her son lying in the *verandah* of his master's house with his hand on his stomach and complaining of great pain. He related to her that he had gone to cut grass and had a dispute with the prisoner No. 19, who had struck him in the stomach with a *luggee* from the effect of which he was suffering. He died during the night. There is only one eye-witness to the fact of the prisoner having struck deceased a blow with a *luggee*. He states that he, deceased and prisoner No. 19, went in separate boats to cut grass, that the said prisoner and deceased quarrelled and struck each other. He saw prisoner strike deceased with a *luggee* and then deceased went away. The witnesses 2 and 3 saw the prisoner and deceased disputing and No. 2, took him home in his boat, as he said he was too much hurt to row himself home. It is proved that the prisoners Nos. 19, 20 and 21, burned the body. The prisoners deny the charge and plead that deceased died of cholera, but this plea is not satisfactorily established. The *futwa* of the law officer convicts the prisoner No. 19 of culpable homicide and the prisoners Nos. 20 and 21 of privity, in which finding I concur, and have sentenced them as described in column 12 of this statement.

1854.

April 8.

Case of
KANOORAM
alias KANYE
and others.

Sentence passed by the lower court.—No. 19, to be imprisoned without irons for one (1) year from this date, and to pay a fine of fifty (50) rupees, on or before the 3rd day of March, 1854, or in default of payment to labor until the fine be paid or the term of sentence expire. Nos. 20, 21, each to be imprisoned without irons for six (6) months from this date, and each to pay a fine of twenty-five (25) rupees, on or before the 3rd day of March, 1854, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) Prisoners Nos. 20 and 21, have appealed. They allow that they burnt the corpse of the deceased. His mother deposes that she wished him not to be burned till she had reported his death. The offence of culpable homicide has been proved against the prisoner No. 19, and it is strongly presumable that Nos. 20 and 21, wished to screen his guilt.

I reject the appeal and confirm the sentence passed upon them.

PRESENT:

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT,

Moorsheda-
bad.

versus

MIRZA MAHOMED ALLEE ALIAS BURRA SAHIB.

1854.

April 8.

Case of
MIRZA Mo-
HOMED AL-
LEE, alias
BURRA SA-
HIB,

CRIME CHARGED.—1st count, wilful murder of Hingoo and Maddee; 2nd count, accessoryship before and after the fact; 3rd count, privy to the said crime; 4th count, torturing and beating the said Hingoo and Maddee deceased; 5th count, aiding and abetting in the said torture and beating; 6th count, privy to the said torture and beating.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 11th February, 1854.

Remarks by the sessions judge.—The prisoner pleaded not guilty.

The prisoner was implicated in the case, the particulars of which have been fully detailed in my letter No. 241, dated 22nd September, 1853. He evaded arrest at the time and was apprehended in the district of Burdwan on the 22nd August, 1853, and committed to this court for trial.

The prisoner formed a part of the suit of His Highness the Nowab Nazim of Bengal, during his shooting excursion in the

Prisoner con-
victed of cul-
pable homicide
and sentenced
to 14 years' imprisonment.

district of Maldah, in the months of March and April, 1853, and while encamped at Purranpore took an active part in the cruel torture and maltreatment of Hingoo and Maddee which caused their death.

1854.

April 8.

Case of

MIRZA Mo-
HOMED Al-
LEE, alias
BURRA SA-
HIB.

- * No. 1, Jhingoo Khan.
- No. 2, Ameer Ale.
- No. 3, Dolal Hurkurra.
- No. 4, Hajee Nunna.
- No. 5, Mohamed Ameen.
- No. 6, Ghassoo Chobdar.
- No. 10, George Shapent.
- † No. 12, Fockeerwoodin Ahamed.
- No. 13, Ameer Nowaja Allee.
- No. 14, Sheikh Ameer Allee.

From the evidence of the witnesses*, it was proved that the prisoner was an active accomplice in the continued torture, brutally inflicted on the persons of Hingoo and Maddee, and that they died from it.

The evidence of the witnesses† for the defence of the prisoner affords exculpation.

The case was tried with the aid of the law officer, whose *futwa* was to the effect that there is legal proof of the prisoner being guilty of being an ac-

complice in the aggravated culpable homicide of Hingoo and Maddee. Concurring with him in his *futwa*, I beg to recommend, with reference to the remarks I have already recorded in the case in my letter above alluded to, that the prisoner be sentenced to fourteen years' imprisonment with hard labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) As remarked by Mr. Mills and myself in summing up the evidence on the trial of this prisoner's accomplices in October last, this prisoner is identified by the witnesses generally, as one of those who took a prominent part on the gross maltreatment ending in death of the deceased persons. The only defence offered is an *alibi*; which is in no respect supported by the witnesses cited for that purpose. In concurrence with the sessions judge and *futwa*, I convict the prisoner, Burra Sahib, of culpable homicide, and, as recommended by the sessions judge, sentence him to fourteen years' imprisonment with labor in irons in banishment.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND MUSST. CHOWRASSEEA.

versus

Sarun. KASHI KOORMEE (No. 2,) AND NIRGHIN RAI (No. 3.)

1854.

CRIME CHARGED.—Prisoner No. 2, culpable homicide of Dirgopal Koormee; prisoner No. 3, aiding and abetting in the same.

April 10.

CRIME ESTABLISHED.—The same as crime charged.

Case of

Committing Officer.—Mr. J. F. Lynch, deputy magistrate of Sewan with powers of a magistrate.

KASHI

KOORMEE and another.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 25th January, 1854.

Plea of *alibi* not proved. Conviction and sentence affirmed.

Remarks by the sessions judge.—This is a case of affray attended with homicide, arising out of ill-feeling and disputes existing between the residents of two villages, about some water-courses. It is shown that the two prisoners and some other parties came upon the deceased in his field, and after abusing him, set to and beat him in such a way as eventually to cause his death. Kashi appears to have been the person who struck the fatal blow, and though it was not thought much of at the time, and the wounded man was therefore never sent into the hospital, it is shown that he never rallied after he received it and after lingering for some eleven or twelve days he died from its effects. Dr. Bose, the officiating civil surgeon, who examined the body, has clearly testified by his report that the injury inflicted was the cause of death and though (as he has left the district) his evidence has not been taken in the case, there is still ample proof that up to the time of affray the deceased was quite well and that after it, he could take nothing but a little milk, and that in fact it was the cause of his death. Both prisoners deny their guilt and plead *alibis*, but they have quite failed in establishing them, as there is no doubt of their guilt, and the Moulvie also convicts them. I have in concurrence with his *futwa* convicted and sentenced them both as noted above.

Sentence passed by the lower court.—No. 2, to be imprisoned without labor and irons for a period of four (4) years from the 25th January, 1854, and to pay a fine of forty (40) Rs. within one month from the above date, or in default of payment to labor, and No. 3, to be imprisoned without labor and irons for a period of three (3) years from the 25th January, 1854, and to pay a fine of (30) thirty Rs. within one month from the above date, or in default of payment to labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The plea of *alibi* is not sufficiently established to avail the prisoners; Kashi Koormee has also said that he was not named at first. This is true as regards the report of Gridharee Koormee, who only reported the occurrence as one of common affray, so that no particular enquiry was made; but on the information being lodged at the thannah, after death of deceased, Kashi Koormee was mentioned and the evidence is strong against him.

The appeal is rejected.

1854.
April 10.
Case of
KASHI
KOORMEE and
another.

PRESENT:

SIR R. BARLOW, BART., *Judge*.

GOVERNMENT,

versus

JHAKARROO DOSS.

Rungpore.

CRIME CHARGED.—1st count, riot attended with murder of Seeboo Napit and wounding of Jugdhoo, Hungso and Munsha; 2nd count, being present, aiding and abetting in the above crime.

CRIME ESTABLISHED.—Riot attended with murder of Seeboo Napit and wounding of Jugdhoo, Hungso and Munsha.

Committing Officer.—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, sessions judge of Rungpore, on the 2nd January, 1854.

Remarks by the sessions judge.—This case was tried by the sessions judge on the 29th March and 14th June of 1844, and is thus reported by him.

“It is proved that Hurch Kisshun, prisoner No. 1, gave a lease of a two anna share of his jote to one Bejoy Kant (witness No. 17,) and that for an arrear of rent a dispute arising between the sharers, the zemindar had attached the whole jote, placing the crop of *dhan* in the house of one Gundhurb, which was guarded on the part of the zemindar by Shanea, and Bejoy Kant had put his servants, Seeboo Napit (the deceased), Jugdhoo, Hungso and Munsha, to take care of his share of the *dhan*, that prisoner, No. 1, did not forcibly carry it off. In consequence of the dispute subsisting between them, Bejoy Kant having paid the entire balance of rent demanded by the zemindar on the jote, the attachment was withdrawn, but before Bejoy Kant had had time to remove his share of the crop and while his people remained in custody of it, prisoners Nos. 1 to 4, with others (not

1854.
April 11.
Case of
JHAKARROO
Doss.
Prisoner convicted by the sessions judge of riot with murder and sentenced to five years' imprisonment. Such sentence being illegal, the Court called for the proceedings, and convicting the prisoner of riot with homicide, upheld the term of imprisonment as signed by the sessions judge.

1854.

April 11.

Case of
JHAKARROO
DOSS.

committed) and with sticks arrived at the spot, and with abuse drove them off, severely wounding Seebou Napit on the face and head in three places and all over the body, from the effects of which wounds he died the same evening, after having been removed to his house from Gundhurb's, the object of prisoner No. 1 having been to seize the whole *dhan* and not let Bejoy Kant have any, in which prisoners Nos. 2 and 3 united with him. The body of the deceased arrived at the sudder station in too decomposed a state to admit of being examined by the surgeon."

The prisoner absconded immediately after the riot and has not been heard of since until October last, when information was given at the thannah and he was arrested.

Two witnesses Nos. 1 and 2, whose evidence had been taken at the former trials and who had named him, both at the thannah and before the magistrate as a rioter, swear to him before the sessions as the same man they implicated before, who has been absent from his home ever since. The other witness recognises him as the Jhakarroo connected with the riot.

In his defence, the prisoner denies and says he has been a byragee for eighteen years, he produces two witnesses who have known him for four years.

I tried the case with a jury, Sreekant Neogee, Issur Chunder Doss, and Chunder Kishore Muzoomdar, who returned a verdict of guilty, in which I agree.

Sentence passed by the lower court.—Imprisonment with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) The Court called for the record for the reasons stated in their resolution of the 3rd ultimo.

The prisoner, who has been apprehended after the lapse of ten years, is charged with riot *attended with murder* and on conviction of that offence, by the sessions judge, was illegally sentenced to five years with irons and labor on the 2nd January last.

The riot was attended with loss of life, there was a dispute about shares of some grain, when Seebou Napit the deceased was killed by some one with a club. The case is one of homicide (not of murder) which the sessions judge was competent to dispose of. The judge and jury convicted the prisoner; I see no reason to interfere with the conviction of the prisoner on the minor charge of homicide and confirm the sentence passed upon him.

PRESENT:

SIR R. BARLOW, BART., *Judge*.

GOVERNMENT,

versus

BURKUTOOLLA ALIAS WOOJUT (No. 23.) AND GOUR SHIKAREE ALIAS GURIBOOLLA SHIKAREE (No. 24.)

Hooghly.

1854.

CRIME CHARGED.—1st count, Nos. 23 and 24, having committed a dacoity in the house of Shib Chunder Dey Telee of Natapul, on the night of the 5th January, 1851; 2nd count, prisoners Nos. 23 and 24, having belonged to a gang of dacoits.

April 11.

Case of BURKUTOOL-

CRIME ESTABLISHED.—Dacoity.

LA alias WOOJUT and another.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 1st February, 1854.

Two prisoners convicted of dacoity, sentenced to sixteen years' imprisonment. Appeal rejected.

Remarks by the officiating additional sessions judge.—The prisoners were charged with Haneef Shikaree and six others, with having committed a dacoity in the house of Shib Chunder Dey at Natapul, on the night of the 5th January, 1851, and with having belonged to a gang of dacoits. The commitment was made by the commissioner for the suppression of dacoity and two approver witnesses prove the charge against the prisoners, their evidence goes to show that Gour Shikaree a renowned dacoit chief planned the affair and got together the gang. They met at the *rendezvous*, which was a lonely place on the banks of a dry nullah, and after cutting bamboos and performing *Kali Puja* proceeded to the attack by $\frac{1}{2}$ past 11 P. M. The sirdar stood at *ghati*, and one of the gang getting over the wall let the rest in through the outer gate. The dacoits carried off a bag of pice and two pieces of cloth, besides the jewels worn by the women of the house. For further particulars of this case I refer the Court to my letter of reference No. 30,* of this day's date, in which I have proposed a sentence of transportation for life on the prisoner's associates Haneef and others, and convicted them of the crime charged in the 2nd count of the indictment.

Sentence passed by the lower court.—To be imprisoned with labor and irons for fourteen (14) years, and in lieu of corporal punishment for two years more, in all sixteen (16) years each in banishment.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) The case of these two prisoners came before the Court

* See remarks by the officiating additional sessions judge on the case of Haneef Shikaree and others, Nizamut reports for March last, page 325.

1854. and was disposed of with that of five others, regarding whom a reference was made by the additional judge of Hooghly, on the April 11. 11th March last. The Court confirmed the sentence of sixteen years passed on them, on conviction before the sessions judge of the dacoity at Natapul. No further orders are necessary on their appeal presented to the judge of Hooghly on the 24th March.

Case of BURKUTOOLA alias WOOJUT and another.

PRESENT:

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT,

versus

GOROODOSS HAREE (No. 4.) SURROOP HAREE (No. 5.) DOYA ALIAS UDOITO HAREE (No. 6.) AND BISHO-NATH HAREE (No. 7.)

Hooghly.

1854.

April 13.

Case of
GOROODOSS
HAREE and
others.

CRIME CHARGED.—1st count, going forth in a gang with the intention of committing a dacoity on the 11th November, 1853; 2nd count, illegally assembling and going forth at night with evil intention.

CRIME ESTABLISHED.—Going forth in a gang with the intention of committing a dacoity.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 14th January, 1854.

Remarks by the officiating sessions judge.—The prisoners pleaded not guilty.

The witness Gobin Misree, No. 1, was passing near the village of Chundrabun going to call a doctor to visit a sick child, about a couple of hours after midnight on the night of the 27th of Kartick, when he saw a body of men assembled in a waste spot in the middle of the fields, and considering the circumstance suspicious, he went and informed the chowkeedar and phareedar who assembled the villagers and proceeded to the spot. Upon their approach the prisoners fled in different directions. The prisoners, Nos. 4, 5, 6, 7, were recognized by all the witnesses, who pursued and captured them at the house of one Lochun, and upon returning to the place, where the prisoners had been sitting, they found *lattees*, *mussals*, and some liquor, &c.

The prisoners denied the charge, alleging that they were in their own houses on the night in question, which, however, their witnesses failed to substantiate. The *futwa* of the law officer convicted the prisoners upon both counts of the charge.

Prisoners convicted of going forth in a gang with intention to commit dacoity, acquitted in appeal, the evidence being insufficient to justify a conviction, though such as to create suspicion against the prisoners which would warrant an inquiry into their means of living.

Three of the prisoners, viz., Nos. 4, 5, 6, are convicted dacoits having already undergone seven years' imprisonment on that account, and the fact of their assembling with the prisoner No. 4, and several others in an unfrequented place at 2 o'clock in the morning, with *mussals* and other accompaniments of dacoity, and their immediate flight upon discovery being fully proved by the evidence adduced, I coincide with the law officer in convicting them as charged in the calendar, the conviction upon the 2nd count, although superfluous, when the first charge has been established, not being erroneous.

I sentence the prisoners, Nos. 4, 5 and 6, to imprisonment for (5) five years, with labor in irons and prisoner No. 7, to (2) two years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The sessions judge's remarks on the trial show that no information had reached any one, that a dacoity or other criminal act was contemplated by the prisoners or their associates. The police were informed by a person, who *accidentally* saw these men and others assembled together in a field outside the village, of the fact, and went to apprehend the prisoners, who ran off on seeing them, and were pursued and taken in a liquor shop. On returning to the spot where they had been seen, *lattees*, *mussals* and some liquor were found there.

These are the only facts to support the charge and conviction of "going forth in a gang to commit a dacoity."

As stated before, there was no previous information before the police, and the prisoners have made no confession of any criminal intent whatever.

The real motive, therefore, for their assembling together is unknown, but presumed from the facts.

They are not, however, in my opinion, sufficient to justify a legal presumption that the prisoners had gone forth in a gang to commit a dacoity; they were so far suspicious, that they would warrant an enquiry into habits and present livelihood, especially of those previously convicted, but the circumstances stated do not, in my opinion, form sufficient ground for any substantive charge of crime.

I therefore acquit the prisoners of the charge on which they have been convicted.

1854.

April 13.

Case of
Goroodoss
HAREE and
others.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND RAJMUXNY KUSHBEE,

versus

Rungpore.

MEENOO KHULIFA.

1854.

April 15.

Case of
MEENOO
KHULIFA.

CRIME CHARGED.—1st count, burglary and theft of property, value Rs. 407-13, in the house of Rajmunny Kushbee, the prosecutrix, on the 11th March 1853, corresponding with 29th Phalgun 1259, B. S.; 2nd count, taking and having in possession property acquired by the above burglary, knowing it to have been so acquired.

CRIME ESTABLISHED.—Taking and having in his possession property acquired by burglary, knowing it to have been so acquired.

Prisoner convicted of having in his possession property acquired by burglary, sentenced to three years' imprisonment. Appeal rejected.

Committing Officer.—Mr. A. W. Russel, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, sessions judge of Rungpore, on the 30th January, 1854.

Remarks by the sessions judge.—It appears from the records of the case and the deposition of the prosecutrix, that on the 29th of Phalgun (11th of March) last, the house of Ramjunny Kushbee was broken into and property valued at Rs. 407-13 annas carried off, amongst which are enumerated the four shawls produced before the court. The efforts of the police to find out the thieves were in vain. From the deposition of the witnesses, it is shown that the prisoner some time in Bhadoon deposited the four shawls, at 33 Rs. with witness, No. 6, to be mended, stating that he had obtained them from Imam Buksh's wife. The witness, No. 6, suspecting all was not right, made enquiries and found out that the story was false and that the prisoner was a *durzee* of Baboo Ramsoonder's, on four rupees a month, he, therefore, refused to give up the shawls, although the prisoner, through witnesses, Nos. 11 and 12, sent him 39 rupees and promised him eleven more if he would do so, and he gave intimation to the officiating magistrate; enquiries being made, the prosecutrix came forward and proved by witness Nos. 8, 9 and 10, the shawls to be her's.

The prisoner in his defence denies the charge, declares he never placed the property with witness, No. 6, with whom he has a quarrel, but only brings witnesses as to his character, which, at best, is proved to be very questionable.

The law officer convicts on the 2nd count and I agree, and sentence accordingly.

Sentence passed by the lower court.—Imprisonment with labor and irons for three (3) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) A clear *prima facie* case has been made out against the prisoner, which he has not been able to rebut in any way by the witnesses cited by him.

I uphold the conviction and sentence.

1854.

April 15.

Case of
MEENOO
KHULIFA.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND OTHERS,

versus

JEEUN.

Patna.

1854.

CRIME CHARGED.—Riot attended with plunder of property, valued at Rs. 70 belonging to Bunsee, plaintiff, and of property valued at Rs. 50, belonging to Nimdhary Singh, plaintiff, and with wounding of the said Nimdhary Singh.

CRIME ESTABLISHED.—Riot attended with plunder of property valued at Rs. 70 belonging to Bunsee, plaintiff, and of property valued at Rs. 50 belonging to Nimdhary Singh, plaintiff, and with wounding of the said Nimdhary Singh.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 18th January, 1854.

Remarks by the sessions judge.—The defendant in the case was one of the principals in a charge of plunder of property perpetrated on the prosecutors, Bunsee and Nimdhary, attended with riot and wounding. The case was tried before this court on the 12th February, 1853. (See calendar No. 5, of November, 1852,) and the prisoners sentenced to four and three years' imprisonment with labor in irons respectively, with the option of paying a fine in lieu of labor. The defendant, who has escaped apprehension until the present time, is clearly convicted of the charges brought against him and in accordance with the former sentence, he will suffer three years' imprisonment with labor, or in lieu of labor pay a fine of 150 Rs., within fifteen days from this date. The *futwa* of the law officer is concurrent with the judgment of the court.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The prisoner was named from the first as engaged in the outrage, which formed the subject of the previous trial. Those witnesses who then named him, have now recognised him. I reject the appeal.

April 15.

Case of
JEEUN.

The prisoner was convicted on recognition by the witnesses, who had named him on the previous trial of others engaged in the same offence.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND ESHANCHUNDER GHOSE,

versus

Backergunge. APPOO CALLING HIMSELF ABBASS ALLY (No. 1.) DEORI MIRDHA (No. 2.)

1854.

CRIME CHARGED.—Riot attended with culpable homicide of

April 15.

Dhonye Kazee and the wounding of Radhanath Dutt and Rowshun on the 11th January, 1852.

Case of

APPOO

CRIME ESTABLISHED.—Riot attended with culpable homicide

Calling himself ABBASS Dutt. of Dhonye Kazee and the wounding of Rowshun and Radhanath

ALLY.

Committing Officer.—Mr. W. M. Beaufort, magistrate of Backergunge.

Prisoners convicted of riot attended with culpable homicide, sentenced to six years' imprisonment. Appeal rejected.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 20th January, 1854.

Remarks by the sessions judge.—The riot of which the prisoners are accused, occurred several years ago. The case was originally tried at the sessions for July, 1852, and the following is an extract of the remarks of the judge upon it.

"Eshanchunder Ghose, the plaintiff in this case, deposes that he is a tushseeldar of Rajib Lochun Singh, in Hawla Rajnarain Singh, Kismut Tofabaree, and that at the beginning of Poos last, his master, Rajib Lochun, and his nephew, Radhanath Dutt, and their servant, Futtick Paul, came to the cutchery and remained there. On the night of the 27th of that month, deponent and his servant, Ram Rajah Dass, above named, with a traveller, named Komul Chuckerbutty, were there, together with Azmutocollah, the owner of the house, and Nowaboodin, his nephew. That a little before dawn about 300 or 350 men, servants of Nilkunt Roy, armed with *soolfees*, spears, *dhowls* and shields, were coming to attack the cutchery, when deponent and the others left it and retreated to the house of Sumeeroodin, where on account of there being no room for them in the cutchery, four peadahs of Rajib Lochun named Zaheeroodin, Dhonye Kazee, Rowshun and Kokye Mullick, were lodged. That the rioters not finding them in the cutchery after a short interval, came on to the house of Sumeeroodin, crying out Ali, Ali, Kali, Kali, and called out that it was the order of Nilkunt Roy that they should seize and carry off Rajib Lochun Singh. The peadahs, behind whom the deponent and his master remained, replied that he was not there, when Lall Mahomed, No. 2, struck Dhonye a blow on the head, and Warish, No. 1, struck a *soolfee* into his belly above the navel and he fell on the

ground. The rioters then struck Rowshun with *soolfees* on the left side of the nose and on the shoulder, and on the thigh and he also fell. On seeing this, plaintiff ran off to give intelligence at the thannah, where he arrived in the afternoon and gave his deposition before the darogah, and on the next day returned to the place with the zemindar. Radhanath Dutt and Rowshun were brought on that day also from the cutchery of the talookdar of Aruz Bagee, by the jemadar. Radhanath Dutt had a wound on his forehead and on the calf of his left leg."

The prisoner Appoo has been identified at the sessions by ten witnesses; viz. by No. 1, Azmutoolah; No. 2, Kalam Gaze; No. 3, Radhanath Dutt; No. 4, Dhun Gaze; No. 5, Manick Manjee; No. 6, Chamaroo; No. 8, Dhun Gaze, 2nd; No. 9, Imamoodin; No. 10, Mungul Khan and No. 11, Sumeeroodin, as the person whom they know by the name of Appoo; and against whom they formerly gave evidence. Of these Nos. 1, 2, 5, 6, 8, 9, 10 and 11, named the prisoner, both before the police and before the magistrate.

The prisoner, Daori, has been recognized by ten witnesses at the sessions, viz. by Nos. 1, 2, 3, 5, 6, 8, 9, 10 and 11 above named, and No. 12, Dowlut, of whom Nos. 5, 6, 8, 9, 11 and 12, named the prisoner, both before the police and the magistrate.

The defence of Appoo was that his name is not Appoo, but Abbass, and that he had nothing to do with the riot, and that he was ill at his own house on the day of occurrence.

Daori too rested his defence upon an *alibi*.

Two of the jury convicted both the prisoners, the third had doubts of the identity of Appoo, and acquitted him. I coincided with the majority and convicted both the prisoners, in disregard of the evidence to their *alibi*.

I don't doubt that the prisoner's name may be Abbass. Under that name he most likely has, and does conduct his business, but men of the prisoner's class commonly go by two names and the common name is generally not the most proper one. The prisoner's being able to show, that as Abbass he has been appointed a deputy Kaze, and that as Abbass, he has been publicly sued, is no evidence that he has not been known to the identifying witnesses as Appoo jemadar. The identity and guilt of the prisoner, be he Abbass or be he Appoo, is clearly established by direct evidence of eye-witnesses, upon whose testimony the Court has sentenced many other persons formerly tried upon the same charge. They speak positively and without the slightest doubt, as to their knowledge of the prisoner and of his identity with the person whom they formerly called Appoo. To declare that the prisoner is not Appoo, is to hold these persons guilty of wilful falsehood. I can see no motive which would induce them to recognize the prisoner as Appoo, were he really a different person. No attempt has been made to show who

1854.

April 15.

Case of
Appoo
Calling him-
self Abbass
ALLY.

1854. Appoo was, if he is not the prisoner, and he can be no mean person either; for if the witnesses have perjured themselves in falsely recognizing the prisoner, such a result could only have been procured by the weight of the purse of the proper Appoo. April 15. Case of Appoo. The prisoner is a deputy kazee, and possesses *golaks*, and it is more likely that if the witnesses were open to a bribe, that they would have been bought over by him, than that having been bought over by another person of the same name, the prisoner should be unable to say who this Appoo was who had been able to exercise such an unfair influence to his prejudice over the witnesses. Calling himself ABBASS ALLY.

Sentence passed by the lower court.—Each to be imprisoned for (6) six years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) There is a conflict of evidence as to the identity of the prisoner, but there is no apparent motive for the prosecutor's attempting to substitute this man for another, and the prisoner at the sessions did not attempt to prove more than an *alibi* in his own defence. I see no reason to interfere with the sessions judge's order, the appeal is therefore dismissed.

PRESENT:

J. DUNBAR, Esq., Judge.

GOVERNMENT AND ANOTHER,

versus

Mymensingh.

1854.

SHEIK EUSOFF (No. 1.) AND SHEIK ASSAN (No. 2.)

April 15.

CRIME CHARGED.—Wilful murder of Peeroo *alias* Peer Mahomed.

Case of

SHEIK
EUSOFF and
another.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Two prisoners convicted of the culpable homicide of a mahout, whose elephant had broken loose and damaged their crops, and sentenced to two years' imprisonment. Appeal rejected.

Tried before Mr. W. Trotter, sessions judge of Mymensingh, on the 20th February, 1854.

Remarks by the sessions judge.—From the allegation of the

* No. 11, Sheik Eusoff.

No. 12, Sheik Alee Mahomed.

No. 13, Sheik Saroo.

No. 17, Neeamut Mate.

No. 19, Sheik Nuzam.

prosecutor, the evidence of the witnesses* and the defence of the prisoners before the police and the magistrate, it appears that an elephant belonging to Anund Ki-

shore Roy, zemindar, which had been in the charge of the deceased Peeroo got loose and destroyed some sugar-cane belonging to the prisoners; that the deceased, the driver, went to look for the

elephant, and that when he came up near the sugar-cane field, the prisoners took him into the field to show him the injury caused by his negligence, and there assaulted him and, leaving him at a by-path near the field, ran away. There were no eye-witnesses to the assault, but witness No. 17 saw the prisoners drag deceased into the field, and No. 11, hearing a noise went there and saw the prisoners dragging him towards a pathway and running away; witnesses Nos. 12 and 13 also saw prisoners leaving deceased near the field and running off. The civil surgeon who examined the body of the deceased stated before me, that death was caused by rupture of the spleen, which was large and diseased, that there was a bruise on the left cheek and one on the right temple, an abrasion of the skin and bruise on the left side of the chest, also on the left shoulder and on the back of the left hand, one on the right wrist and one on the outside of the left knee, and that these injuries must have been produced by blows with the fist, foot or some hard instrument. Prisoner No. 1, at the thannah and before the magistrate, admitted having inflicted a blow with his fist on the deceased's waist and stated that prisoner No. 2, struck him on his temple and laid hold of his neck and knocked him down, but that deceased himself afterwards walked as far as the by-path and sat down. He admitted that he died from the effects of the beating, which was however unpremeditated. Prisoner No. 2, also admitted assaulting the deceased but said he did so by order of prisoner No. 1. In the sessions court No. 1, said he did not strike the deceased, but No. 2, and that it was incorrectly written down in his confession that he did so. No. 2, admitted having assaulted the deceased and stated that No. 1, also inflicted two blows, and acknowledged his thannah and fouz-dary confessions. The prisoners named no witnesses to defence. The *futwa* of the law officer convicts the prisoners of culpable homicide on strong presumption, in which finding I concurred.

Sentence passed by the lower court.—To be imprisoned without irons, each for the period of two (2) years, and to pay a fine of 30 Rs. on or before the 20th March, 1854, or in default of payment to labor until the fine be paid or the sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The statements of the prisoners themselves leave no room to doubt, that the deceased came by his death at their hands, however unintentionally.

The Court see no reason to interfere with the sentence of the sessions judge.

1854.

April 15.

Case of
SHKIK
EUSOFF and
another.

PRESENT :

A. DICK, Esq., Judge.

GOVERNMENT AND PRANCHAND SAHA,

versus

Dinagapore. GRIDHAREE SINGH (No. 1,) GOLOCK RAJBUNSEE (No. 2,) GUNGAHARREE ALIAS GUNGARAM RAJBUNSEE (No. 3,) BROJO LALL SAHA (No. 4,) SAHUSH MUNDLE (No. 5,) SHAIK NAZEER (No. 6,) PANCHOO SONAR (No. 7,) SHAM RAJBUNSEE (No. 8,) BASSOO MUSSULMAN (No. 9,) SHAM GARAREE (No. 10,) LALOO GARAREE (No. 11,) BUSSNUT GARAREE (No. 12,) JUMIUT KHULIFA (No. 13,) POORNAH CHYE (No. 14,) GOURKISSORE MOHULDAR (No. 15,) SOOBID ALLEE (No. 16,) AND NEELACHUL DAY (No. 17).

1854.

April 15.

Case of
GRIDHAREE
SINGH and
others.

In a case of
dacoity attend-
ed with mur-
der, twelve pri-
soners were
convicted as
principals and
sentenced to
transportation
for life.

Three prison-
ers were con-
victed of privy
and sentenced
to five years'
imprisonment
and two were
released. A
reward of 200
rupees was or-
dered to be
paid to the je-
madar who at-
tacked the da-
coits and led to
their capture
and conviction.

CRIME CHARGED.—1st count, dacoity with murder of Nobinchand Saha and wounding of Pranchand Saha; 2nd count, having in their possession property obtained by dacoity, with murder of Nobinchand Saha and wounding of Pranchand Saha, knowing the same to be such.

Committing Officer.—Mr. E. C. Craster, officiating joint-magistrate of Maldah.

Tried before Mr. James Grant, sessions judge of Dinagapore, on the 11th of February, 1854.

Remarks by the sessions judge.—On the night of the 8th November, 1853, the house of the prosecutor was attacked by some twenty-five dacoits, who wounded him and his younger brother Nobinchand Saha, (who on the following day died of his wounds), and carried off property valued at Rs. 5,279-0-9, of which Rs. 238-5 worth was recovered.

The dacoits were attacked when retreating, by Rambhunjun Chobe, jemadar, in a neighbouring khas mehal farmer's cutcherry, who cut down one of the dacoits and wounded some three or four more. The wounded dacoit named his accomplices first to the darogah and again to the magistrate, shortly before he died of his wounds, and when he had no hope of recovery. The prosecutor and his brother were in the first instance maltreated to make them produce their property; but the latter having recognized one of the dacoits, Chubbee, (not yet apprehended) was nearly cut to pieces, and the prosecutor was wounded and beaten until he became senseless. Some of the neighbours heard the prosecutor's brother plead former kindness to Chubbee, and ask for mercy, and one of the prisoners states that the other dacoits remonstrated with Chubbee, who pleaded self-preserva-

tion, as he had been recognized. I think it very possible that murder, when not considered absolutely necessary, was disapproved of by the gang, but they were evidently determined dacoits, several armed with swords and the said Chubbee with a sword stick (*goottee*) and having assembled by appointment at the rendezvous, some in the large boat, some in a small *dinghee*, and some from different directions by land. The prisoners Nos. 3, 4, 7, 8, 10, 11, 12, 13, 14, 15 and 16 confessed to the dacoity in the foudjary and the greater part of them did so before me. Prisoner, No. 2, was found in the dacoit boat, confessed fully in the mofussil and foudjary, and before me allowed that he was in the dacoit boat. Prisoner, Nos. 6 and 9, in the same way confess as to their share of plundered property. This leaves Nos. 1, 5 and 17 to be disposed of. In respect to No. 1, Gridharee, it is proved, and he allows that the dacoit boat was his; that his wife gave from his house the property found on Kallee Bewah released, of which Nos. 12 and 14 are proved to be plundered, and 15 and 16 being old are not spoken to distinctly, also that No. 13 was put in his house by his servant, prisoner, No. 3, and might have contained Nos. 10 and 11, also proved to be plundered property. It is proved by

the witnesses noted in the margin, that
 62, Jagun Mundle. he left his village with the other dacoits
 63, Bhadoo Shaik. in the boat ostensibly to purchase
 64, Bahadoor Shaik. grain. He was named by the dacoit
 65, Jhaboo Mundle. Hazuree, who died of his wounds
 66, Ruggoonath Manjee. and by all the confessing dacoits as the leader, and a cloth stained with blood was found in his house on his brother-in-law, which he says belonged to Adawlut Shaik, a man who worked in his house and had the itch. In respect to No. 5, Sahush, it is proved that his servant, prisoner No. 6, produced plundered property, Nos. 40 to 47, from the house of his, Sahush's, mistress, Poyrun Bewah; No. 19, released, all his share with the exception of a necklace said to have been made over for sale to Poyrun by the wife of the servant, prisoner No. 6; that he was apprehended near Moorshedabad, shortly after the dacoity, in company with his servant, the prisoner No. 6, who he states was at enmity with him and named him in his confession from spite, and who declares they were on their way to Ranaghaut, while Sahush asserts he was on his return, after settling zemindaree accounts. He accounts for a fresh wound on his side (tallying with the confessions of the other prisoners) by saying that it was caused by some coolies, who were cutting bamboo, letting a *dhao* fall, and in his mofussil answer, he said, that the prisoner, No. 13, Jumiut had named him as accomplice, because he refused to join him in a former dacoity. In respect to No. 17, Neelchand Day, it is proved that plundered property, Nos. 2 to 6, gold and silver orna-

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Case of
 GRIDHAREE
 SINGH and
 others.

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Case of
GRIDHAREE
SINGH and
others.

ments plundered were found in his house in a closed brass pot, concealed among rice in an earthen pot and separate from a large quantity of similar things in his house. The property is distinctly identified by the prosecutor's witnesses (one gold armlet as that of the prosecutor's younger brother who was murdered,) and was selected from all the property found in the house by the prisoner, No. 7, Panchor and his servant, the prisoner No. 4, Brojolall, who stated in their confessions that they had made it over to him. The witnesses produced by the prisoner are his relations, friends and neighbours, who were not present when his house was searched, or refute the circumstances under which the property was found concealed, and his assertion that the gold armlet belonged to his child and was not large enough for a grown up person is in no way established. I am perfectly satisfied as to the guilt of the said prisoners, Nos. 1, 9, and 17, and consider the proof against them on the 2nd count sufficient; I would convict the prisoners, Nos. 2, 3, 4, 7, 8, 10, 11, 12, 13, 14, 15 and 16, on the 1st count, and the prisoners, Nos. 1, 5, 6, 9 and 17, on the 2nd count, and I recommend that Nos. 1 to 16, be sentenced to imprisonment for life in transportation beyond sea, and No. 17, to 14 years' imprisonment in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) In his recorded statement in the foudjary, Brijolall Saho, prisoner No. 4, distinctly denied going to, or being concerned in the dacoity, and said not a word about making over any property to Neelachul, prisoner No. 17; whatever he said before the darogah, he repudiated as having been forced by intimidation. The Court therefore not satisfied with the evidence against him order his release.

There is no proof against the prisoner No. 17, of being concerned in the dacoity. The articles found in his house sworn to by the prosecutor and his witnesses, as part of the plunder, have been very clearly proved to be his own; and much more of the same kind of property was also found in the house. It is true, the proof is the testimony of his own relatives, who however could so well identify property belonging to a person, as his own relatives? Substantial reasons for discrediting such testimony on such a point, must be given, before rejection of it, especially when the party accused previously held a good character, and was respectable. The Court therefore likewise acquit the prisoner, Neelachul, and order his release, and the suspected property to be restored to him.

The confessions in the foudjary of the prisoners No. 2, Goluck, No. 3, Gunga Haree and No. 6, Nazeer, amount to no more than privy to the dacoity after its occurrence. They were forced to accompany the dacoits, but took no part and got no plunder. These the Court convict of being accessories after the

dacoity, and sentence them under the circumstances to five years' imprisonment with labor in irons. 1854.

The Court concur with the sessions judge in convicting prisoners No. 1, Girdharee, No. 5, Sahush, No. 7, Pancho, No. 8, Sham Rajbunsee, No. 9, Bassoo, No. 10, Sham Gararee, No. 11, Lalloo Gararee, No. 12, Bussunt Gararee, No. 13, Jamiut Khulofa, No. 14, Poornah Chye, No. 15, Gourkissore, No. 16, Soobed ; of the dacoity in prosecutor's house, attended with murder ; and sentence them, as recommended by the sessions judge to transportation for life.

The Court direct that a reward of two hundred rupees be given to Rambhujun Chobe, jamedar, for his valiant attack on the dacoits,—cutting down one, and wounding two others,—in consequence of which alone, so many of the gang have been brought to justice.

They regret, however, to observe, that though so many of the gang were apprehended, and confessed, scarcely any of the plunder has been recovered ; and the chief leader of the gang and the murderer has escaped.

April 15.

GRIDHAREE
SINGH and
others.

PRESENT :

B. J. COLVIN, Esq., *Judge*.

GOVERNMENT,

versus

MUTHRA DOSS.

Patna.

1854.

CRIME CHARGED.—Fraud, in having on the 31st August, 1853, instituted a suit in the court of W. Travers, Esq., judge of Patna, against Kishen Doss and Monee Lall claiming the share of his deceased brother Gungun Sahoo in their shop, such a claim being entirely false and unfounded.

April 15.

Case of
MUTHRA
DOSS.

CRIME ESTABLISHED.—Fraud, in having on the 31st August, 1853, instituted a suit in the court of W. Travers, Esq., judge of Patna, against Kishen Doss and Monee Lall claiming the share of his deceased brother Gungun Sahoo in their shop, such a claim being entirely false and unfounded.

The institu-
tion of a false
and unfound-
ed civil claim
cannot be made
the ground of
a criminal pro-
secution.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 7th January, 1854.

1854.

April 15.

Case of
MUTHRA
DOSS.

Remarks by the sessions judge.—The defendant in this case was committed by the civil court, to take his trial before the magistrate for fraud, in having made a solemn declaration on oath under Section 3, Regulation 19, of 1841, to the effect that he was heir of his brother Gungun Sahoo who had demised in the month of Bysack, 1260, F. and in virtue of such inheritance, that he, defendant, was entitled to succeed to a share in the banking house of Kishen Doss and Monee Lall in the city of Patna. It is now clearly proved by the evidence of ten witnesses that the said Gungun Sahoo died in the month of Bhaadour, 1257, F. and further that he never held any greater interest in the house of Kishen Doss and Monee Lall than the office of gomashtha, in which capacity he died at the date above mentioned. It is clear from this that the deposition of this defendant was only given with the mischievous intention of obtaining fraudulent possession, through the instrumentality of the civil court, of property that never belonged to his brother Gungun Sahoo, and never could legally revert to him. The books of the house of Kishen Doss and Monee Lall were produced in court, but found to contain nothing which could exculpate the defendant. Certain sums of money appeared due to the deceased Gungun Sahoo, and these had been temporarily withheld from his heirs by the members of the house, in consequence of their refusal to take the amount conjointly by reason of great disagreement amongst themselves. This difficulty appears to have led the defendant to invent the fraud with which he now stands charged. The counsel for the defendant refused to call any witnesses in support of his client's case, but threw himself on the merciful consideration of the court, since it was known that he had been misled by the evil advice of a vakeel since dismissed from his situation. Bad advice is however, no excuse for a dishonest action. The defendant deliberately swore to a falsehood with an intention to profit by it at the expense of an unconcerned party, and he also endeavoured to secure the co-operation of the civil court in furtherance of his evil project. The *futwa* of the law officer convicts the defendant, and I concur in the finding. The defendant is sentenced to three years' imprisonment without irons, and a fine of 200 rupees, payable on or before the 25th instant, or in default of payment to labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I do not consider that the charge as laid can be made the ground of a criminal prosecution. The judge might, under Section 14, Regulation 17, of 1817, have directed the commitment of the prisoner for perjury, in having deposed falsely on oath that Gungun Sahoo died in 1260, whereas he knew him to have died in 1257, for the date of death was material to the issue of the summary suit brought by him under Act 17, 1841, as by Section 14, his application could not have been entertained,

unless preferred within six months from Gungun Sahoo's death, but the charge in its present shape cannot be sustained, as there is no law which authorizes criminal prosecutions for false and unfounded claims, although fines may be imposed for them by the civil courts in *certain* cases—see Section 12, Regulation 3, 1793, Section 3, Regulation 13, 1796, and Clause 10, Section 3, Regulation 26, 1814.

I acquit the prisoner and direct his release.

PRESENT :

J. DUNBAR, Esq., *Judge*.

GOVERNMENT AND ANOTHER,

versus

SHEIK DUKLAH.

Mymensingh.

CRIME CHARGED.—Burglariously stealing property valued at 9 annas.

1854.

CRIME ESTABLISHED.—Burglary and theft.

April 15.

Committing Officer.—Mr. C. E. Lance, assistant with joint-magistrate's powers at Jemalpoore.

Case of
MUTHRA
Doss.

Tried before Mr. W. Trotter, sessions judge of Mymensingh, on the 27th February, 1854.

Remarks by the sessions judge.—It appears from the evidence*

An old offender convicted of burglary was sentenced to four years' imprisonment. Appeal rejected.

* Prosecutor Sheik Fozoo.
Witness No. 2, Sheik Tip-
poo Mundul.
,, No. 5, Konah Mundul.
,, No. 6, Kangaloo.

recorded on the trial, that prosecutor's house was burglariously entered at night by a thief, who took out therefrom a *lotah* and a *batee*, and as he was pulling out the quilt of his bed he awoke and

immediately caught the thief, and calling out for assistance witness No. 6, and prosecutor's brother

Sheik Kangaloo. Khoaz came out from another house and secured him, as well as the articles he took out, and found that it was the prisoner who was an inhabitant of their village. When the villagers came up the prisoner admitted having entered the prosecutor's house to commit a theft and acknowledged the instrument (*sind katee*) to belong to him, saying he was instigated to commit the crime by one Beerbul, who was standing outside, when he entered the house, but who started off as soon as he was caught. Before the joint-magistrate he repeated his confession and admitted that before the police to have been voluntarily given. But before me he denied the charge, saying that as he was returning from a *haut* at night he was seized by the prosecutor and his witnesses, and through ill-treatment confessed to the theft he did not commit and was made over to the police, who also ex-

1854. April 15. Case of **SHAIK DUK-LAH.** tortured his confession, and as he was in an insensible state when brought before the joint-magistrate, he does not remember what he said there. He, however, could not assign any reason for the prosecutor and his witnesses having thus wantonly denounced him, and when his thannah confession was read over to him, he admitted that it was what he repeated before the darogah; and named no witnesses to his defence. The joint-magistrate committed him to the sessions, as he was formerly punished for two years in a case of cattle-stealing, and considered him deserving of more punishment. The jury returned a verdict of guilty of burglary and theft against him, in which I concurred.

Sentence passed by the lower court.—To be imprisoned with labor and irons for the period of four (4) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The prisoner's guilt is clearly proved. The Court see no reason to interfere with the sentence.

PRESENT:

J. DUNBAR, Esq., Judge.

KHODERAM KURMOKAR AND GOVERNMENT,

versus

Jessore.

KAMOO KHAN ALIAS PEAR KHAN.

1854.

CRIME CHARGED.—1st count, committing a dacoity at the house of the prosecutor on the night of the 15th June, 1853, corresponding with the 2nd Assar 1260, and plundering therefrom property valued at rupees 32-4; 2nd count, privy to the portions of the plundered property knowing it to have been obtained by the above dacoity.

April 18. Case of **KAMOO KHAN, alias PEAR KHAN.**

Prisoner convicted of dacoity, sentenced to seven years' imprisonment. Appeal rejected.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. E. W. Malony, assistant joint-magistrate of Magoorah.

Tried before Mr. R. M. Skinner, sessions judge of Jessore on the 6th January, 1854.

Remarks by the sessions judge.—From the evidence* for the prosecution, it is proved that at 2½ A. M. of 15th June, 1853, the house of Khoderam was attacked by ten or twelve dacoits, who plundered property to the value of rupees 32-4, but none of the criminals were recognised.

* Witness No. 1, Surrouf Chunder Kiseburto.

Witness No. 2, Kishto Mohan Dass.

Witness No. 3, Neemy Dass.

Witness No. 4, Joran Chekeedar.

Subsequently a dacoity occurred in the house of Prannath Saha who named Pear Khan, whose house was searched on 16th December.

* Wit. No. 11, Parnoollah Sheik.

Wit. No. 13, Aradhun Sheikh son of Momdec.

The property proves to † Prosecutor Khoderam.

Witness No. 1, Surroof Chunder Koeeburto.

Witness No. 14, Kaloo Khonkar.

Witness No. 15, Gholam Hossein.

Witness No. 16, Panchoo Khonkar.

Witness No. 17, Aradhun Sheikh son of Gadai.

Witness No. 18, Golock Kurmocar.

His wife produced* certain property which she said her husband had obtained by dacoity from Khoderam.

be a portion of that described in Khoderam's inventory and it has been duly identified.†

Pear Khan *alias* Kamoo Khan confessed before the police, before the assistant joint-magistrate and the sessions court.

I convict the prisoner of dacoity, and sentence him to seven years' imprisonment with labor in irons.

1854.

April 18.

Case of
KAMOO KHAN
alias PEAR
KHAN.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.) After confessing at every stage of the proceedings, the prisoner now appeals, on the ground that his apprehension, so long after the occurrence of the dacoity, was very irregular. Had he been really guilty, he says, he must surely have been detected before. This plea is of no force. The petition is rejected and the sentence confirmed.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge*.

GOVERNMENT AND GOOR SOHOY,

versus

GUNGGOO.

Patna.

1854.

CRIME CHARGED.—Culpable homicide of Kurtta.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, session judge of Patna, on the 28th March, 1854.

April 18.

Case of
GUNGGOO.

Remarks by the sessions judge.—The particulars are as follow :—

The prosecutor, Goor Sohay, who is younger brother of the deceased, Kurtta, and Gunggoo, who were *goraets* of the adjoining villages, Belouree, Selhouree, had, for some time previous to the occurrence, been at variance about carrying the zemindaree dawk, and that an ill-feeling existed between them on this

The prisoner's plea of *alibi* not having been proved, the finding and proposed sentence were affirmed.

1854.

April 18.

Case of
Gungoo.

account. That on the night of Thursday, the 9th of February, at about 9 o'clock P. M., the defendant, Gungoo, accompanied by several others, came to a *Kullean* on the outside of Selhouree, where the deceased and prosecutor lived, and sent word to them to come out and have some talk. They immediately complied and soon after arriving at the spot where the other party were, that quarrelling and high words ensued, and the prosecutor was knocked down by several of the party, his brother, Kurtta, at the same time receiving at the hands of Gungoo a blow from a *latee* on the head, which rendered him senseless. After this, that Gungoo and his associates ran away, and Kurtta being taken home, died on the following morning.

The witnesses marginally noted, all of them residents of Selhouree and living in the immediate vicinity of the *Kullean*, where the outrage was perpetrated, prove the charge preferred against Gungoo. The evidence of the medical officer, Dr. Dicken, goes to show that the blows inflicted on the deceased were *repeated* and *very severe*.

The report of the darogah is not so exact as it should have been; but there is nothing in it to invalidate the proofs established against Gungoo. The *futwa* of the law officer finds *kutl-shuba-amd* and I convict the defendant of culpable homicide.

In consideration of the attack having been obviously premeditated and made at night, with the purpose *at least* of doing the deceased a severe bodily injury, moreover the blows having been repeated and severe enough to kill a very strong man, as stated by Dr. Dicken, and previous ill-will being shown to have existed, also with reference to the defendant having come to the spot armed with a club or *lohabunda*, the case seems to me to be very aggravated, I accordingly recommend a sentence of fourteen years' imprisonment with labor in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The prisoner has set up a plea of *alibi*, but his witnesses do not establish it, for although they state that he was at Abburn Chuk from Wednesday to Sunday, they cannot specify the dates. As they were examined by the magistrate on the 18th February, if the prisoner's statement was true that he was there from the 8th to 12th February, the Sunday referred to must have been the preceding one, and they should therefore have been able to indicate it.

On the other hand the witnesses have deposed throughout to the prisoner having struck the deceased the blow, which felled him to the ground. It is true that they mention only one blow having been dealt, whereas the civil surgeon gave it as his opinion that several blows had been inflicted, and this dis-

crepancy has not been reconciled, but it is not enough to invalidate the testimony of the witnesses, who have deposed to the main fact of prisoner having knocked down the deceased, and of his subsequent death, which the medical officer has in his evidence ascribed to violence.

I confirm the finding, and sentence the prisoner as proposed.

1854.

April 18.

Case of
GUNGGOO.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

CASE No. 1.

GOVERNMENT AND MUSST. LUCKHEE BEWA,

versus

GOLAM SUFDER.

CASE No. 2.

GOVERNMENT AND SHEIKH BOODHAYE,

versus

GOLAM SUFDER.

CRIME CHARGED.—*In case No. 1.*, 1st count, committing burglary in the house of Luckhee Bewa, prosecutrix, and stealing therefrom property valued at Rs. 3-4; 2nd count, receiving and possessing portions of the property, knowing them to have been acquired by the above burglary and theft on the 28th June, 1853.

Dacca.

1854.

April 19.

Case of
GOLAM SUF-
DER.

In case No. 2. 1st count, theft of a cow valued at Rs. 2, the property of Radhanath Roy; 2nd count, receiving and possessing the cow, knowing her to have been acquired by the above theft on the 28th June, 1853.

The evidence
against the pri-
soner being
held sufficient,
his appeal was
rejected.

CRIME ESTABLISHED.—*In case No. 1.* Receiving stolen property knowing the same to have been so obtained.

In case No. 2. Cattle-stealing.

Committing Officer.—Mr. A. J. Jackson, officiating joint-magistrate of Furreedpore.

Tried before Mr. C. T. Davidson, commissioner of Dacca, with powers of a sessions judge, on the 19th January, 1854.

Remarks by the commissioner.—*In case No. 1.* The prosecutrix states that one morning in Assar last, she fastened up her house and went to the bazar to purchase what she required and returned at about 11 A. M., when she found that her house had been broken into and property carried off. She called the chowkeedar and her neighbour Baddoollah and shewed them what

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Case of
GOLAM SUF-
DER.

had happened, and went immediately with the former to the thannah to give information. While at the police station, the prisoner, who had been taken up for cattle-stealing, was brought there, and he had some of her property on him, which she at once recognized. The fact of the prosecutrix's house having been broken into and robbed, and the recovery of portion of the property from the prisoner have been duly proved. It has also been recognized as being that of the prosecutrix. The prisoner denies, but has set up no good defence. The witnesses named by him were called to speak to character only, and their evidence is not in his favor. The *futwa* of the law officer convicts the prisoner of receiving stolen property, knowing the same to have been so obtained, in which finding I concur, and have sentenced him, with reference to the case of cattle-stealing which follows this in the abstract, and to former convictions of burglary and theft, to seven years' imprisonment with hard labor.

In case No. 2. The prisoner is charged with cattle-stealing. He was seized with the cow in his possession by the prosecutor and witnesses, Moheemah Chunder and Bussuroodeen, who saw him driving the animal along the road. He was taken to the thannah and some property (clothes), belonging to the prosecutrix in the burglary case above reported, was found upon him. The prisoner denies, but has set up no good defence. He named the same witnesses to character as were examined in the foregoing trial and declines having them re-examined. The *futwa* convicts the prisoner of the charge, and I concur in the conviction. The punishment awarded in the burglary case covers this conviction also, no further sentence is therefore called for.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I see no reason to interfere with the consolidated sentence passed upon the prisoner in the above two cases. He acknowledges that he has twice before been punished for theft, and the present charges are sufficiently proved against him. His defence, that the cases have been got up, is in no way substantiated.

I reject the appeal.

PRESENT :

J. DUNBAR, Esq., *Judge*.

GOVERNMENT,

versus

KANGALEE ALIAS SHOOBUL SIRDAR.

Backergunge.

CRIME CHARGED.—1st count, wilful murder of Adoo and Sonaoollah; 2nd count, affray attended with the culpable homicide of Adoo and Sonaoollah.

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CRIME ESTABLISHED.—Affray attended with culpable homicide.

Case of
KANGALEE
alias SHOOBUL
SIRDAR.

Committing Officer.—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 6th January, 1854.

Prisoner convicted of an affray, attended with culpable homicide which occurred in 1848, and sentenced to five years' imprisonment. The evidence to his identity being sufficient, his appeal was rejected.

Remarks by the sessions judge.—The affray in which the murder of Adoo happened, took place in January, 1848. The case was tried at the sessions for August of that year (case No. 4,) when the judge who sat on the trial, recorded the following remarks.

“Prisoners Nos. 1 to 9, inclusive were on one side and prisoners Nos. 10 to 16, inclusive were on the other part and were the adherents and dependants of Luckheenarain Chatterjea, between whom and prisoner No. 1, there was a dispute about some land in Bansbooneah, the scene of the affray with which the prisoners were charged. Witness No. 1, who was the mohurir of the thannah stationed at Bhugerutpoor an outpost, deposed that on the 4th Magh he heard Luckheenarain Chatterjea was assembling men for the purpose of attacking Mahomed Kulleem. A burkundaz (witness No. 2,) was consequently deputed to ascertain particulars and on his confirming the mohurir's suspicions, the latter started for Bansbooneah where Mahomed Kulleem (prisoner No. 1,) resided and arrived there that night; on the morning of the 6th Magh a number of persons, about seventy or eighty men, the dependants of Luckheenarain Chatterjea, armed with spears, swords and *lattees*, came from the direction of Bansbooneah about two *ghurress* off where Luckheenarian lives, and advanced first towards the house of Mahomed Kulleem, but in consequence of the mohorir's remonstrance they turned off towards the house of Koodrutoollah, a ryot of Mahomed Kulleem, and arrived there that night the next day Wednesday, the 7th Magh, about 2½ *pahurs* of the day the mohurir heard from (witness No. 2,) that Luckheenarain's people were advancing and insisted upon the release of one Fukeer Singh, who was said to be confined in

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SIRDAR.

Shibnarain's Baree. The mohurir immediately directed witness No. 2, and witness No. 4, burkundazes, to release the person mentioned, and on their arrival prisoner No. 1, came out of his house with about 100 or 150 persons armed with spears and *lattees*, and sounded the Nakara and advanced upon the plain where both parties met and engaged in a conflict, which was followed by the death of Sonaoollah Sirdar and the desperate wounding of Adoo Sirdar, both the followers of prisoner No. 1, who in consequence of what had occurred, decamped with his people. Luckheenarain Chatterjea's men then took up Sonaoollah Sirdar who was dead and placed him upon bamboos, and forcibly removed Adoo Sirdar, who was still breathing though in a dying state, from the possession of witness No. 2, who it seems had previously taken charge of him under the direction of the mohurir; these persons then went off with the body towards Koodru-toollah's *baree*, followed at a distance by the mohurir and his party both by land and water; on reaching a khal (called the tetal barce khal) they observed ten of Luckheenarain Chatterjea's people take two corpses in a *dinghee* from the khal to the middle of the *powerdon nuddee* sinking them and the boat in the water, about twenty or twenty-five *hauts* in depth, they came back to the shore where their companions were assembling."

The prisoner, who calls himself Kangalee, was lately apprehended with fifteen others, in a boat while travelling under circumstances which raised a belief that they were going to commit an affray. It appears that there were two boats containing each fifteen armed men; one of these boats escaped, but the darogah caught the one in which the prisoner was. He gave himself out to be Kangalee, but the darogah found on his person a letter addressed to the party in whose service he was engaged, stating that thirty fighting men were under the command of Soobul Sirdar. There being no one on the seized boat, who would admit himself to be Soobul, the darogah conjectured that that person must have been on the other boat which had escaped. But being in the zemindar's cutcherry the next day, (after he had despatched the prisoner to the magistrate) he met a man professing to be a country-man of Kangalee the prisoner. At first he pleaded with the darogah for his release, but the darogah gave him no encouragement, and at length during the talk, the darogah learnt that Kangalee was but an assumed name, and that the prisoner's real name was Soobul. The day after this the darogah fell in with another country-man of the prisoner, who communicated the further information that Soobul Sirdar was a notorious fighting man, and that he had a summons out against him in several cases.

The darogah reported these circumstances to the magistrate, who thereon called upon his record-keeper for a report as to the cases in which Soobul Sirdar was a fugitive. His report was

that Soobul Sirdar had been summoned in the case of the murder of Adoo.

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The witnesses in this case having been sent for, one and all of them recognized the prisoner, as the person whom they alluded to in their former depositions as Soobul Sirdar. Of the ten witnesses examined at the sessions, No. 1, Eshur Chunder Gangolee, No. 2, Shagur Singh, No. 3, Mutaboodeen, No. 6, Zellan Khan, No. 7, Edruk, No. 8, Kummerooddy, No. 9, Ameerooddy and No. 10, Munwar Khan, named the prisoner as well in the mofussil as before the magistrate.

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KANGALEE
alias SHOOBUL
SIRDAR.

The prisoner in his defence denied the charge and affirmed that his name was Kangalee.

Of his three witnesses, two were examined at the sessions, they both say, that the prisoner does not now live in their village, but that he did so some four or five years ago, that they occasionally meet him and know him only as Kangalee, and are not aware that he has ever taken up the profession of a *latial*.

In conjunction with the verdict of the jury, I convicted the prisoner on the second count and sentenced him as shewn in column twelve of this statement.

The grounds of my conviction were

1st. That there is abundant evidence in the foudary record that a Soobul Sirdar was in the fight.

2nd. The witnesses who identify him as one of the rioters, had most of them previous opportunities of becoming well acquainted with his person. They speak positively and undoubtingly of his identity, and there is not the slightest reason to suspect that they are actuated by any unfair motive in desiring to convict the prisoner.

3rd. The circumstances, under which he was apprehended, afford a good presumption that he is by profession a fighting-man, and just such a person as the party in whose dispute the death of Adoo occurred was likely to have engaged.

4th. From the letter saying that thirty-two fighting-men were under despatch commanded by Soobul Sirdar, and that letter having been found on the prisoner's person, a good presumption arises that he was that Soobul, and that whatever may be his proper name, Soobul is the one which it suits him to assume when proceeding on any fighting expedition.

5th. The absence of any appearance of contrivance, or of under-handedness in the proceedings of the police, both as regards the prisoner's apprehension and in the manner of the accidental discovery that he was implicated in this case.

Sentence passed by the lower court.—To be imprisoned for five years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The prisoner denies his identity with the Soobul Sirdar, said to have been concerned in the affray, which occurred in

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 Case of
 KANGALEE
 alias SHOOBUL
 SIRDAR.

1848. The evidence, however, has satisfied the magistrate, who committed the case, and the sessions judge, and two respectable jurors who tried it. I have duly compared the previous depositions, with the evidence now given, and I see no reason to disbelieve the positive assertion on oath of nine witnesses, to the fact of the prisoner having taken a part in the affray, and being then known under the name of Soobul Sirdar. The sentence is accordingly confirmed.

PRESENT :

J. DUNRAR, Esq., *Judge*.

TRIAL No. 2.

GOVERNMENT AND SONARAM GOPE,

versus

SHEIKH MEHERDEE (No. 6, APPELLANT) SHEIKH JAMEER (No. 7,) AND DOORGATEAH NAKURCHEE (No. 8.)

TRIAL No. 3.

GOVERNMENT AND BISHONATH ARCHARJO,

versus

SHEIKH MEHERDEE (No. 9, APPELLANT) SHEIKH JAMEER (No. 10,) AND DOORGATEAH NAKURCHEE (No. 11.)

Sylhet.

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April 21.
 Trials Nos. 2
 and 3, case of
 SHEIKH ME-
 HERDEE and
 others.

CRIME CHARGED.—*Trial No. 2.* 1st count, Nos. 6, 7, and 8, burglary in the house of the plaintiff and theft of property to the value of Rs. 5-6-6; 2nd count, knowingly having in their possession the property obtained by the above burglary.

Trial No. 3.—Nos. 9, 10 and 11, 1st count, burglary in the house of the informant and theft of property to the value of Rs. 6-11-6; 2nd count, having knowingly in their possession the property obtained by the above burglary.

CRIME ESTABLISHED.—*Trial No. 2.* No. 6, burglary and theft, No. 7, burglary and theft and of being an accomplice in burglary and theft, No. 8, being accomplice to burglary and theft.

An old of-
 fender con-
 victed in two
 cases of bur-
 glary, sentenc-
 ed to seven
 years' impri-
 sonment. Ap-
 peal rejected.

Trial No. 3.—No. 9, burglary and theft, No. 10, burglary and theft and of being accomplice to burglary and theft, No. 11, accomplice to burglary and theft.

Committing Officer.—Mr. W. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet on the 27th February, 1854.

Remarks by the sessions judge.—In trial No. 2. The prosecutor awoke at night on the 4th of February, and saw a man escaping from the house through a hole in the wall. He seized him and called aloud, and on his neighbours coming to his assistance, the man was found to be prisoner No. 6. He named the prisoners Nos. 7 and 8 as his accomplices, and on being apprehended they pointed out part of the stolen property.

The prisoners have confessed their guilt in all the courts. The prisoner No. 6 has undergone a sentence of seven years for dacoity, and hence the case was made over to this court. The other prisoners have not been previously convicted, and prisoner No. 8, Doorgateah, is a boy of only seventeen or eighteen years of age.

In trial No. 3.—The prosecutor discovered that his house had been burglariously entered, on the night of the 4th February, and robbed of property to the value of about 11 Rs., some of the missing property was discovered on the apprehension of the prisoners on Sonaram's charge being investigated and has been only recognised. The prisoners pleaded guilty in all three counts and made voluntary confessions before the darogah and magistrate.

Sentence passed by the lower court.—Sheikh Meherdee seven (7) years' imprisonment with labor in irons in banishment, being a consolidated sentence for two offences. Sheikh Jameer, two years' imprisonment with labor in irons, being a consolidated sentence for two offences, and Doorgateah Nakurchee, six months' imprisonment with labor and a ring upon his leg, being a consolidated sentence for two offences.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) Cases Nos. 2 and 3 of February, 1854.

From the wording of the sentences in these two cases, the prisoner, Sheikh Meherdee, who alone appeals, would appear to have been sentenced to seven years' imprisonment with labor and irons in banishment, in each separate case. On referring to the records, however, I find that the sentence is meant to be a consolidated one for that period. The prisoner appeals on the ground, that his sentence is unnecessarily severe, by comparison with that passed on his two associates. I see no reason, however, to interfere. The fact that the prisoner has burglariously broken into two houses, after having suffered punishment for dacoity, shows that severity in his case is needful. The sentence is confirmed.

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Trials Nos. 2 and 3, case of SHEIKH MEHERDEE and others.

PRESENT :

A. DICK, Esq., *Judge.*

GOVERNMENT AND TILLUCK BAOREE,

versus

NUFFER.

Hazareebagh. CRIME CHARGED.—Wilful murder of Kali Baoreen, daughter of the prosecutor Tilluck Baoree.

1854. Committing Officer.—Captain G. N. Oakes, 1st class assistant, Governor-General's Agent, Manbhoom.

April 21. Tried before Major J. Hannynghton, deputy commissioner of Chota Nagpore, on the 25th of March, 1854.

Case of NUFFER. *Remarks by the deputy commissioner.*—The prosecutor states

Prisoner convicted of the murder of his wife on suspicion of her having adulterous intercourse, sentenced to imprisonment for life. that one day in Falgoon, he was summoned by the darogah to identify a corpse which prosecutor recognized to be that of his daughter Kali Baoreen. She was lying with a rope round her neck. There were no marks on the ground of any struggle having occurred. The dead body was sitting upright. On examination it appeared, that there were marks of a blow on the back of the neck and of burning with a lighted stick on the body. The skin was broken. There was an appearance of violence on the pudenda, and there was a slight effusion of blood. Prosecutor does not know whether two women named Lemi and Hari were questioned by the darogah.* No. 1, witness Sadu Baoreen, states that one evening in Falgoon, she saw the prisoner strike his wife Kali Baoreen two blows with a club. She then fell into convulsions; she had some ailment and had had convulsions several times before that. Witness then went to her own house: in the morning the prisoner told witness that his wife was missing. Upon this, search was made in the village, but she was not found that day. On the day after the darogah came and found the body in the jungle. Witness forbade the prisoner to beat his wife. He said that he had seen her misbehaving and would beat her; that he had seen her with Golam. He struck her two blows with a club and put his foot on her neck. She was then insensible.

No. 2, witness Bhowany Baoree. One day in Falgoon, in the early forenoon, the prisoner told the people of Banmohra village that his wife Kali Baoreen was lost; whereupon a general search being made, her body was found in a sitting posture, with a cord of grass, and a cord of hair round the neck, and fastened to the branch of a tree, on the border of a jungle. Information was then

* There was reason to suppose that these women had seen the prisoner beat his wife, the deceased, but before the darogah they denied any knowledge of this.

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 NUFFER.

sent to the darogah who came and cut down the body, and submitted it to the inspection of the bystanders. There were marks of a blow of a club on the back and on the ribs of the left side, and on the left buttock there were marks of burning. Some blood was oozing from the pudenda. The darogah then brought the body to the village, and the prisoner confessed that he had murdered his wife, and had hung her body on a tree in the jungle. Witness proves the record of the inquest.

No. 3, witness Mudun Baoree corroborates the evidence of the last witness.

No. 4, witness Payan Baoree, proves the record of the inquest. The condition of the body and the marks of violence on it led witness to believe that the women had not hung herself. It appeared as if a stick had been thrust into the vagina. The prisoner confessed that he had killed the deceased, because of her misbehaviour, and that he had placed the body in the jungle.

No. 5, witness Gungaram Baoree corroborates the statements of the witnesses Nos. 2 and 3, proves the confession of the prisoner before the police. On the day before the discovery of the body, many of the villagers were absent, having gone to a feast.

No. 6, witness Kinnu Sirdar proves the confession of the prisoner before the police.

The confession of the prisoner is to the effect, that an improper intimacy had existed between his younger brother Golam and his wife Kali Baoree; that he had forbidden it in vain, and that finding them in an adulterous act, he had brought two women to witness the fact, and then struck his wife two blows with a club. She fell into fits, to which she was subject, and died. He then carried the body to the jungle, and tied it to a tree. His sister-in-law witnessed the murder.

No. 7, witness Golam Baoree states that the prisoner is his cousin. Witness had gone to attend a marriage at the prosecutor's house at Ghaut, and had returned home a little before sunset, and found the prisoner and his wife quarrelling, and seeing this, witness went back again. Does not know the cause of the quarrel, witness did make the statement recorded by the darogah. Witness is not the prisoner's cousin, but his full brother, witness cannot say what the darogah has written.

No. 8, Ram Tahidar was told by the prisoner that his wife was missing, and witness therefore with other villagers made search and found the body as directed by the preceding witnesses. The prisoner told the darogah that he had struck the deceased two blows, so that she died, and that she had had some ailment before. Witness does not know of the deceased having misbehaved with Golam.

No. 9, witness Golam Sirdar saw the body and describes its condition. Prisoner said he had killed his wife and had placed her body in the jungle.

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NUFFER.

No. 10, witness Ausman Sirdar, No. 11, witness Prem Manji ; these witnesses describe the search for, and the finding, and the condition of the body as already related.

No. 12, witness Banker Ally, burkundaz, heard the prisoner confess that he had killed his wife Kali Baoreen, because he had found her in the act of adultery.

The prisoner in his defence states that his wife, the deceased, was extremely distressed, because her parents had not invited her to her brother's marriage. Prisoner therefore supposes that, whether from grief, or because of an epileptic ailment, she had, she hung herself. Sadu Baoreen knows of her grief. Prisoner did not confess before the police officer.

Samlall Dutt, Mookhtear.
Nund Koormar Sirkar, ditto.
Gayaram Ray, ditto.

The jury, whose names and occupation are given in the margin, find the prisoner guilty of wilful murder.

In this verdict I concur. The evidence of the witness Sadu Baoree, though far less explicit than that given by her before the police officer, still suffices to prove that the prisoner assaulted his wife, that he struck her two blows, that she became insensible, and that the prisoner assigned as a reason for his act, her misconduct with his brother Golam. All this agrees with the prisoner's confession before the police officer, which confession has been satisfactorily proved. The evidence of the other witnesses also corroborates the confession, inasmuch as the facts described agree with it. But the evidence in some respects goes beyond the confession, and show that the deceased was put to horrid torture, or what was intended for torture, she being in all probability insensible, if not already dead, at the time. The prisoner's brother has given before this court no evidence as to his guilty connection with the deceased ; but he has not denied the statement he made before the police officer, explicitly admitting this important fact. The prisoner's confession must, I think, be taken with this justification as it stands, and therefore I will not recommend a capital sentence. But the most rigorous punishment, short of death, is no more than this case demands, and I therefore recommend that the prisoner be sentenced to imprisonment for life with hard labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. Dick.) The evidence of Sadu Baoree, as given at several times, together with the circumstantial evidence, is sufficient to convict the prisoner of the murder of his wife for faithlessness, independent of his confession before the darogah, denied before the magistrate and at the sessions. The maltreatment of the deceased occurred in the evening, not in the morning at the time of the alleged act of adultery, as witnessed by the prisoner. He inflicted no punishment on his adulterous brother, but cowardly vented his wrath solely on his feeble wife, pregnant, and labouring under disease.

The Court, therefore, on violent presumption, convict the prisoner of the murder of his wife for adulterous intercourse, and sentence him, as recommended by the deputy commissioner, to imprisonment for life with labor in irons: not to transportation; for the sake of a lasting example at the spot, or district where the crime was perpetrated.

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Case of
NUFFER.

PRESENT:

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND JANOKERAM DHARA,

versus

DUSSORUTH DHARA.

Hooghly.

CRIME CHARGED.—Perjury in having on the 30th November, 1853, intentionally and deliberately deposed under solemn declaration taken instead of an oath, before the deputy magistrate of Jchanabad, that his name is Becharam Dhara, and in having on the 30th November, 1853, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the said deputy magistrate, that his real name is Dussoruth Dhara, and that he assumed that of Becharam Dhara his brother in order to personate him as a witness, such statements being contradictory of each other on a point material to the issue of the case.

1854.
April 21.
Case of
DUSSORUTH
DHARA.

Committing Officer.—Baboo Kissory Chand Mitre, deputy magistrate of Jchanabad.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 4th April, 1854.

Remarks by the officiating additional sessions judge.—The charge against the prisoner is set forth in the margin,* and he pleads guilty to the indictment before this court.

Prisoner convicted of perjury, in having given evidence in his brother's name and sentenced, at the recommendation of the sessions judge, to the mitigated punishment of four months' imprisonment.

† Witnesses Nos. 1, 2. The witnesses marginally† noticed prove that the prisoner, when examined in the *serishta* under solemn declaration, gave his name as Becharam Dhara, and when brought before the deputy magistrate to have his deposition read over, affirmed in reply to a question put by that functionary that his name was Dussoruth Dhara, and that he had come to give evidence for his brother Becharam, who was prevented from attending by indisposition.

‡ Witness No. 3. The party indicated in the margin‡ proves that the solemn declaration was administered to the prisoner, before his statement was taken down in the office.

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Case of
DUSBORUTH
DHARA.

The remaining witness for the prosecution proves the charge in general terms.

The prisoner pleads guilty and throws himself on the mercy of the court, disclaiming all fraudulent intent and expressing his ignorance of the obligations and requirements of a court of justice, in consequence of first appearance.

The *futwa* convicts the prisoner of perjury in swearing falsely, and I concur in the finding, it not being proved that the prisoner was sworn again, when examined personally by the deputy magistrate.

The sentence I pass on him is that he be imprisoned for three years with labor, but considering the case peculiarly meriting a mitigation of punishment, from the total absence in it of all *malus animus* of what shape soever, recommend that he be sentenced to four months' imprisonment with labor without irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The Court agreeing with the sessions judge that a mitigation of punishment is proper in this case, sentence the prisoner, as recommended by him, to four months' imprisonment with labor without irons. The Court observe that the charge is laid for giving contradictory statements on oath, the sessions judge remarks that it is not proved that the prisoner was sworn again, when examined personally by the deputy magistrate, but it is clear the two contradictory statements alluded to, were made in one and the same examination, one being in the examination in chief and the other in the cross-examination which followed.

PRESENT :

A. DICK, Esq., *Judge, and*

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND SITUL SIRDAR,

versus

ZURRIP SHEIKH (No. 1,) KANAI CHOKEEDAR (No. 2,) ARUJOOLLAH (No. 3,) NUSSUMUDEEN SHEIKH (No. 4,) AND TINKOWREE MOLLAH (No. 5.)

Rajshahye.

1854.

CRIME CHARGED.—1st count, theft ; 2nd count, knowingly receiving portions of property obtained by theft.

April 21.

Committing Officer.—Mr. F. L. Beaufort, joint-magistrate of Pubnah.

Case of
ZURRIP
SHEIKH and
others.

Tried before Mr. G. C. Cheape, sessions judge of Rajshahye, on the 23rd March, 1854.

Remarks by the sessions judge.—The object of this reference is, because I differ with the law officer as regards the guilt of the prisoner, No. 5.

The prisoner
acquitted on
the ground
of insuffi-
cient evidence
against him.

In his possession were found a *kulsee* and a bell-metal drinking cup ; both these the prisoner said had been pawned to him by the prosecutor, but he denied this, and though a neighbour, and fully aware of the theft, he never came forward nor mentioned the fact of these two articles being in his possession, nor did he, till his house was searched, say one word about them.

The *futwa* of acquittal, as to these being pawned to him, being very indefinite, I distinctly put the question to the law officer, who replied that, in his opinion, they had been pawned, and therefore the prisoner was entitled to his release. I differ entirely from this finding. Only two witnesses depose to the pawning Nos. 83 and 84. One is a debtor and the other related to the prisoner by marriage, and I do not credit one word they say.

I suggest, if the Court concur with me as to the evidence to this plea being bad, (all the others failed,) that the *futwa* be set aside as regards No. 5, and he be sentenced to eighteen months' imprisonment *without* labor or irons, and this with reference to his respectability on which the law officer lays great stress. But receivers are often respectable, and well to do, from their ostensible trade of pawn-brokers, and as the prosecutor did a *little* in the same way, I suspect there was some rivalry between them on this account, and being a neighbour, the prisoner

1854. must have known at the time of receipt, that both the *kulsee* and cup belonged to the prosecutor.

April 21. Sentence has been recorded against the other four prisoners, but no warrant issued pending the result of this reference.

Case of ZURRIP SHEIKH and others. To save the Court time, only a transcript of the evidence for the prosecution, and to the defence of the prisoner Tincowree Mollah is forwarded, as the latter is all the Court need peruse to decide on the point involved in the present reference.

Remarks by the Nizamut Adawlut.—(Present: Messrs. Dick and Colvin.) The Court observe that the evidence to the recognition of the prisoner, at the perpetration of the theft, was rejected as not trustworthy by the *mooftee*, and the sessions judge does not state whether on that point he differed with the *mooftee*. Three witnesses have testified to the pawning of the suspected articles to the prisoner by the prosecutor, and a great many witnesses have strongly deposed to prisoner's character being respectable and above suspicion.

The Court, therefore, not satisfied of the prisoner's guilt, in concurrence with the *futwa*, acquit him and order his release.

PRESENT:

H. T. RAIKES, Esq. Judge.

GOVERNMENT AND CHERAGALLY,

versus

Dacca.

SULLEEMOODDEEN (No. 6,) AND SHEIK ARMAN
(No. 7, APPELLANT.)

1854.

April 22.

Case of SHEIKH ARMAN and another.

Two prisoners convicted of riotously assembling in an armed body, attacking a boat and assaulting the boatmen, and plundering the property. Appeal rejected.

CRIME CHARGED.—1st count, dacoity on the boat of Chera-gally on the river and plundering therefrom property (mustard seed) to the value of Rs. 440; 2nd count, riotously assembling in an armed body attacking the boat of the prosecutor, Chera-gally, assaulting the mallahs and plundering the abovementioned property; 3rd count, being accomplices in the abovementioned crime; 4th count, being accessaries to the abovementioned crime, both before and after the fact on the 7th October, 1851.

CRIME ESTABLISHED.—Riotously assembling in an armed body, attacking the boat of the prosecutor, assaulting the boat-people and plundering the property.

Committing Officer.—Mr. C. Mackay, principal sudder ameen of Furreedpore, exercising powers of a magistrate.

Tried before Mr. C. T. Davidson, commissioner of Dacca, with powers of a sessions judge on the 23rd January, 1854. The prisoners are charged with dacoity and plundering from the boat

of prosecutor property to the amount value of Rs. 440, and with other counts as entered in column 9. The circumstances of this case were detailed in the abstract statement of prisoners punished without reference for the month of February, 1852, from which the following is an extract:—

“On reading the commitment proceedings in this trial, it was evident to me that the case was not one of dacoity, nor indeed had any semblance to one, the origin of the affair being nothing more than a question as to the particular bazar at which the prosecutor should sell his cargo. I consequently directed the law officer to sit on the trial and required from him a *futwa* on the minor charges. It appears that the prosecutor took in a cargo of mustard seed in zillah Monghyr, and was on his way to Modookhally bazar in this district, to dispose of it. On the 3rd of December last, he was sailing down the Chunduna river, and when arrived at Musnudpoor bazar, which is on its bank, he was hailed from the bazar by some people, and required to bring his boat to the ghaut. This he refused to do, urging that he was going on to Modookhally, on which two *dinghis* with a number of men on board were sent off by the prisoners, Nos. 21 and 22, and one Nubboo Sircar (not yet arrested) to bring the boat to the shore, which was done and the boat secured. Prosecutor appears to have gone on the following day, by land to Modookhally (stated to be about six miles distant from Musnudpoor) and returned the next day with a letter from Hosain Mirdah of Modookhally to the prisoner, No. 21, begging him to release prosecutor's boat, but he still refused to do so. On the next day, the 7th December, he again went to Modookhally, and his Arruddar, Dwarkanath Koond, induced a police guard boat that was passing Modookhally to go and release prosecutor's boat. The guard boat manjee took prosecutor on board and went to Musnudpoor, and on reaching that bazar, prosecutor ordered his boatmen to loose his boat and go to Modookhally, which they did, but they had not proceeded far when three boats with armed men came off and setting the police guard boat at defiance, again carried the prosecutor's boat back to the ghaut. The guard boat manjee on this left the place, taking prosecutor with him whom he landed at the nearest spot to the thannah, where he went and laid his complaint on the 8th December. The case was inquired into by the police, and the prisoner arrested and finally committed on the charges above detailed. From the evidence of the eye-witnesses, of whom nine have been examined, the seizure and detention of prosecutor's boat in the first instance on the 3rd October with a view to compel him to sell his cargo at Musnudpoor bazar, and in the second instance, on the 7th idem, the forcible seizure and detention of prosecutor's boat, assault on the boat people, in defiance of the river police, and subsequent sale of part of the cargo, are proved against the prisoners,

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Case of
SHEIKH

ARMAN and
another.

1854. Nos. 21, 22, 23, 24, 25 and 26. The recovery of portion of the property from those who purchased is also established by the evidence of witnesses, and the confessions of the purchasers themselves."

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SHEIKH

ARMAN and
another.

Three of the witnesses to the facts of this case, who deposed at the original trial, have again appeared before this court and been re-examined, and adhere to their former statements. They recognize the prisoners as having taken part in the riotous attack, &c. on prosecutor's boat. The prisoners deny the charge, No. 6 pleads an *alibi*, but the plea is not established by his witnesses. The prisoner, No. 7, pleads enmity between his landlord and the landlord of the witnesses for the prosecution, and his witnesses speak to this plea, but in the face of the direct evidence against him, it is inadmissible. The *futwa* convicts both the prisoners of the attack, &c. on the prosecutor's boat and in concurrence with the finding, they have been sentenced as described in column 12 of the statement. This trial came before the Superior Court in appeal, and the conviction and sentence of this court were upheld by the presiding judge, (Mr. A. J. M. Mills) on the 4th May, 1852.

Sentence passed by the lower court.—Prisoner No. 6 to be imprisoned without irons for three (3) years from this date, and to pay a fine of fifty (50) rupees on or before the 23rd day of February, 1854, or in default of payment to labor until the fine be paid or the term of sentence expire. Prisoner No. 7, to be imprisoned without irons for three (3) years from this date and to pay a fine of twenty-five (25) rupees on or before the 23rd day of February, 1854, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The particulars of this case are given on the trial of Mirtenjoy Bhunj and others, on the 4th of May, 1852. The evidence seems trustworthy, and the other prisoners were convicted upon it. I see no reason to interfere with the sentence and reject this appeal.

PRESENT :

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND GOOROO CHURN DUTT,

versus

MUDDUN CHUNDER ALIAS MUDDUN MOHUN MOO-KHAPADEA.

Dacca.

1854.

CRIME CHARGED.—1st count, assembling in an armed body and committing a dacoity on a boat on the river and plundering therefrom property to the value of Rs. 3104-6 ; 2nd count, attacking the boat and plundering property to the value of Rs. 3104-6, seizing and carrying off Gooroo Churn Dutt, prosecutor, and other churrundars, mullahs and manjee of the boat ; 3rd count, detaining in close confinement at different places the said Gooroo Churn Dutt, prosecutor, and other churrundars and also the mullahs and manjee, and subjecting them to severe discomfort and hardship, and concealment of the boat ; 4th count, being an accomplice in the said 1st, 2nd and 3rd counts.

CRIME ESTABLISHED.—Being an accomplice in attacking the prosecutor's employer's boat, of carrying off prosecutor and others, who were on board and keeping them in durance and of making away with the said boat.

Committing Officer.—Mr. C. Mackay, principal sudder ameen of Furreedpore.

Tried before Mr. C. T. Davidson, commissioner of Dacca with powers of a sessions judge.

Remarks by the commissioner.—The prisoner is charged with assembling in an armed body and committing a dacoity on a boat, and plundering therefrom property to the value of Rs. 3104-6, and with other counts entered in column nine of this statement. The circumstances of this case were detailed in the abstract statement of prisoners punished without reference for the month of February last, from which the following is an extract. "A dispute appears to have existed for some time past between Mr. H. G. French, of the Meerunge concern and Geerees Chunder Chowdry, deceased, regarding the Luckypore indigo-factory. The matter eventually came under Act 4, of 1840, and possession of the said factory was awarded to the Chowdry." This alone seems to have been the origin of the outrages of which the following are the circumstances. On the 8th Magh, 1258, B. S. corresponding with the 20th January, 1852, the prosecutor who is a servant of the widow of the said Geerees Chunder Chowdry, Kishto Chunder Mookerjee, Bawul Chunder Roy, Surroop Chunder Mookerjee and Ramtonoo Doss, set out from Seyudpore in a hired boat laden with indigo, sugar, and

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KHAPADEA.

Prisoner con-
victed by the
sessions judge
as an accom-
plice in an at-
tack on a boat,
acquitted in
appeal.

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MUDDUN
CHUNDER
 alias MUDDUN
 MOHUN MOO-
 KHAPADEA.

other property of his employers, to the amount value of Rs. 3104-6, which he was to take to Calcutta for sale. On the following day, as they were passing Mr. French's Kusseeanee indigo-factory, they were hailed by a number of persons standing at the factory ghaut to bring the boat to the shore, which they refused to do. On receiving this refusal, the prisoners, Nos. 2 to 9, inclusive, of the October calendar, and Nos. 3 and 5, of the December one, and other armed men by order of the prisoner, Chundee Churn, pushed off in another boat, attacked and assaulted the manjee and mullahs, pulled down the sail and brought the boat to the factory ghaut, when the prisoner and his companions above named, and the manjee and boatmen, in all ten persons, were forcibly taken from the boat and locked up in the factory godown. During the night they were all, with the exception of Bawul Chunder Roy, removed to another factory called Chur Narundee. From this factory, the prosecutor effected his escape. The remaining eight persons, as well as Bawul Chunder Roy who was detained at Kusseeanee, were afterwards taken to Meerungunge factory where Mr. French himself resides. The prisoners, Nos. 10, 11, 12 and 13, obtained their release a few days after by the intervention of the prisoner, No. 14, who is the gomashtha of the party from whom prosecutor's boat was hired, and whose ryots they are. There remained under detention at the factory five persons, viz. Kishto Chunder Mookerjee, Surroop Chunder Mookerjee, Bawul Chunder Roy, Ramtonoo Doss and Sumbhoonath, one of the boatmen, not being a ryot of the proprietor of the boat, was not released as the others were. Of these Bawul Chunder managed to escape after twelve or thirteen days' confinement, and the other four were detained upwards of three months, when they were found at a Kalee Baree by the police, having been intermediately moved about from one place to another to evade the police, who were in search of them. The prosecutor further states, that the boat was plundered of the property and afterwards sunk in the Baleshur river, and that the prisoner, Gouree Kanth Ghose, received compensation for it from Mr. French. The attack on and seizure of the boat and the persons on board is fully established by the evidence. In support of the charge of detention there are the statements of the parties detained and the fact of the police darogah, having found in confirmation of prosecutor's statement, his name scratched on the floor of the Kusseeanee and Chur Narundee factories, and that of the witness Kishto Chunder Mookerjee on the floor of the latter factory. This circumstance is also proved by the evidence of the witnesses, Nos. 24, 25 and 26, who accompanied the darogah into the godowns when investigating the above point. There is no proof of what subsequently became of the boat and property on board, but it is shown by the evidence that Gourikanth the prisoner

No. 14, received compensation for the boat, and that he procured the release of all the boat-people from the Meerungunge factory. The inference to be drawn is, that the boat was destroyed as alleged. Three of the eye-witnesses who attended and deposed at the former trial have been re-examined. They repeat their former statements and recognize the prisoner, as having been among those who committed the outrage. The prisoner denies the charge and pleads an *alibi*, but the witnesses called by him do not support it. The *futwa* of the law officer convicts the prisoner of attacking the prosecutor's employer's boat, of carrying off prosecutor and others who were on board, and keeping them in durance and of making away with the said boat, in which finding I concur, and have sentenced him, as described in column 12 of this statement. This case came before the superior court in appeal and the conviction and sentence of this court were upheld by the presiding judge (Mr. J. R. Colvin) on the 10th May, 1853.

Sentence passed by the lower court.—To be imprisoned without irons for four (4) years from this date and to pay a fine of two hundred (200) rupees, on or before the 20th day of February, 1854, or in default of payment to labor until the fine be paid or the term of the sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The three witnesses referred to by the sessions judge were not examined by the darogah, until the 5th of March, after Husseinooddeen had implicated the prisoner in his confession on the 8th of February.

I do not find the prisoner's name in any of the petitions, or depositions on the record taken before that date. Little reliance can be placed on those witnesses who state themselves to have been casual spectators of the outrage on their way to market. I acquit the prisoner.

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Case of
MUDDUN
alias MUDDUN
MOHUN MOO-
KHAPADEA.

PRESENT :

SIR R. BARLOW, BART., *Judge*.

GOVERNMENT AND JADUB JOGEE,

versus

KALIMUDDEEN MUNDUL (No. 1,) SHOOBUL JOGEE (No. 2, APPELLANT), MIRTUNJYE JOGEE (No. 3, APPELLANT), MOHESH PAUL (No. 4, APPELLANT), RAM JOGEE (No. 5, APPELLANT), PULTOO OOPADHIA (No. 6, APPELLANT), KALLA CHAND CULLIA MANJEE (No. 7, APPELLANT), BHOOTA COWRAH (No. 8, APPELLANT), ROOP CHAND COWRAH (No. 9, APPELLANT), RASSOO DEY (No. 10,) RAJKISTO DAS SOONREE (No. 11,) NUFER SHEIKH (No. 12,) GUNNESH JOGEE (No. 15, APPELLANT), BHOLANATH MUNDUL (No. 16, APPELLANT), JOGINDRONATH MULLICK (No. 18,) RAMDHONE PAUL (No. 19, APPELLANT.)

24 Pergunnah.

1854.

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Case of
PULTOO
OOPADHIA
and others.

In a conviction of dacoity the sentences passed by the sessions judge were upheld, except as regards one prisoner, who was acquitted.

CRIME CHARGED.—1st count, dacoity in the house of prosecutor Jadub Jogee, and plunder of property to the amount of Rs. 1,023-8 against Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16 and 19; 2nd count, being accessary after the fact to the above crime against No. 18; 3rd count, receiving portions of the above property knowing them to have been obtained by dacoity against Nos. 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 16 and 19.

CRIME ESTABLISHED.—Prisoners Nos. 2 to 12 and 15, dacoity and receiving portion of plundered property, knowing them to have been acquired by the above dacoity. Prisoners Nos. 16 and 19, receiving portions of plundered property, knowing them to have been acquired by dacoity. Prisoner No. 18, being accessary after the fact, in harbouring Pultoo. Prisoner No. 6, dacoity, Prisoner No. 1, receiving part of plundered property, knowing it to have been acquired by dacoity.

Committing Officer.—Mr. J. M. Lowis, assistant, exercising powers of joint-magistrate of the 24 Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 28th January, 1854.

Remarks by the officiating additional sessions judge.—The house of the prosecutor was attacked by a gang of dacoits, on the night of the 2nd November last, and property to a large amount in gold and silver ornaments carried off. The affair was planned across the river, where the prisoners for the most part reside, and the party crossed and re-crossed in a boat hired for the occasion. The prosecutor and his mother, the witness No. 1, were sleeping on the premises when the attack was made and recognized the prisoners Shoobul Jogee No. 2, Mirtunjye

Jogee No. 3, and Gunnesh Jogee No. 15, in the act. The latter and her daughter, who were sleeping together, were beaten and ill-used by the dacoits, and mother and son named to each other the persons severally recognized by them on the departure of the gang from the premises. These parties were well known to them as connections and visitors. The articles plundered were partly pledged and partly the property of the prosecutor. Acting on the clue obtained from the alleged recognition, the police arrested the prisoners Mirtunjye Jogee No. 3, and Gunnesh Jogee No. 15, who confessed crime and in their confessions made disclosures which led to the apprehension of the whole of the prisoners and recovery of a portion of the plundered property. It will be seen from the record, that the greater part of the prisoners admitted their complicity in the dacoity before the police on being taken into custody, that some of them gave up the stolen articles and repeated their confessions before the magistrate. These recorded confessions will be found full and consistent with each other, in a remarkable degree, and create, in my mind, a strong presumption of their truth and genuineness. I cannot do better than give a summary of the proofs brought against the prisoners in the mode adopted by the committing officer. Against the prisoner Kalimuddeen No. 1 will be recorded the fact that in his house were found buried five articles of the stolen property, i. e., three gold and two silver ornaments, his rightful ownership of which he makes no attempt to establish. Against the prisoner Shoobul Jogee No. 2, that he confessed before the police and repeated his confession orally before the magistrate, but refused to have it taken down in writing without the promise of pardon, which was refused; that he was recognized during the dacoity and produced a portion of the plundered ornaments from under ground in a spot adjoining his house. Against the prisoner Mirtunjye Jogee No. 3, that he confessed before the police and the magistrate, that he was recognized at the time of the dacoity and sold some silver ornaments, and old silver to one Jhuree Potdar (released by this court). Against the prisoner Mohesh Paul No. 4, that he confessed both in the mofussil and before the magistrate, and produced articles of the stolen property. The like remarks apply to the prisoners Ram Jogee No. 5, Pultu Opadhia No. 6, Kalachand Kolia No. 7, Bhuta Kawrah No. 8, Roopchand Kawrah No. 9, and Rasu Dey No. 10. Against the prisoner Rajkisto Dass, No. 11, will be found recorded that he confessed in the mofussil and verbally repeated that confession before the magistrate, but would not consent to have it committed to paper without the promise of pardon, which was denied, and that in his possession was found a portion of the plundered goods. Against the prisoner Nufer Sheikh No. 12, that he confessed before the police and held in possession part of the stolen pro-

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perty. Against the prisoner Gunesh Jogee No. 15, that he confessed in the mofussil and was recognized during the dacoity by the witness No. 1. Against the prisoner Bholanath Mundel, No. 16, that part of the plundered ornaments were found with him, his title to which he could in no wise make out. And against the prisoner Ramdhun Paul No. 19, that he held from his son the prisoner No. 4, four gold and six silver ornaments, which he hid in a tank and produced therefrom, after the latter had admitted crime, and told the police that he had made over the property to the custody of his father. The case of the prisoner Jogindronath Mullick No. 18, is special, and I shall notice it presently apart from the rest. All the prisoners plead not guilty before this court, and make various kinds of defences, some of which they attempt to establish without effect. These pleas are frivolous to a degree, and disentitled to the slightest consideration. I shall now briefly comment on the case of the prisoner Jogindronath Mullick, who was committed on a charge of being an accessory after the fact in this dacoity and plunder. The evidence which criminales him is the testimony of the police sergeant, Thomas Campbell, witness No. 45, Kini Raur, witness No. 63 and Nubkishto Dhara, witness No. 66. The former and latter prove the harbouring of the prisoner Pultoo Oopadhea, No. 6, and the second establishes an implied knowledge of such harbouring on the part of the prisoner Jogindronath Mullick. The prisoners' defence drawn up by his counsel, Mr. Longueville Clarke of the Calcutta Bar, will be found on the record of the trial and goes to hold the prisoner harmless of all intent by word or deed to rescue Pultoo from the law, or hinder his apprehension and trial. I will not follow Mr. Clarke through his arguments *seriatim* and state my objections against them. It is enough for the purposes of conviction that he does not deny the gist of the charge brought against his client, namely, the concealment of the man Pultoo in the *bitukkhana* of Jogindronath Mullick, during his presence and with his implied knowledge, and Pultoo's eventual release therefrom by the police. These facts are established by the clearest and most conclusive evidence and constitute an offence of a high order, in a country where zemindars and influential persons in the interior possess such means of thwarting the police and arresting the course of law and justice. Considering the prisoner's youth, however, and his thorough respectability in point of birth, education and circumstances in life, I find it difficult to connect him as an agent with the felony out of which this trial has arisen, and consequently receive with extreme reservation that part of Kini Raur's testimony, which by implication does so, though I utterly dissent from the grounds assumed by Mr. Clarke for rejecting her evidence and regarding it as inapplicable. The conviction therefore is of misdemeanor, and hence the compara-

tive lenity of the sentence and absence in it, of the additional penalty of labor and irons.

Sentence passed by the lower court.—Prisoners Nos. 2 to 12 and 15, to be imprisoned with labor and irons, in banishment for fourteen years, and in lieu of corporal punishment two years more, in all sixteen years each. Prisoners Nos. 16 and 19 and No. 1, to be imprisoned with labor and irons for seven years each. Prisoner No. 18, to be imprisoned without labor and irons for three years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) The prisoners, some twenty or more in number, appear to have laid their plans with the intention of committing a dacoity in the prosecutor's house, and having collected on the Howrah side of the river, they went down to a place called Rajgunge, where they got on board a boat, crossed over the Buddertollah, a short distance below Garden Reach, whence, they proceeded by land to Dum-Dum, the village in which the prosecutor resides, attacked and plundered his house of property, amounting, as the charge states, to upwards of one thousand rupees.

The prosecutor recognized, through an opening in the mats which surround his house, the prisoner No. 2, his mother, the first witness, also recognized the prisoners, No. 3, and No. 15, by the light of the torches, used by the dacoits in the attack. The above prisoners, Nos. 2 and 3, were apprehended, the latter the day after the dacoity, when he implicated most of the other prisoners, some of whom were seized on his confession before the police. No. 2, was subsequently seized, confessed and also gave the names of most of the others as having taken part with him in the dacoity. Thirteen of the prisoners confessed before the police to the dacoity, and having in their possession some of the plundered property. Their confessions are verified by the depositions of witnesses before the sessions judge and the property, ornaments of different descriptions, belonging to the prosecutor or to the witnesses, by whom it was pledged, has been sworn to by them, the value of this property appears to have been about 500 Rs. the remainder was cash, none of it however was recovered. The prisoners, Nos. 3 to 10, inclusive, also confessed before the foudary court; prisoners, Nos. 13, 14, 17, 19 and 20, were released by the sessions judge; prisoner, No. 18, by this Court, on appeal against his sentence of three years on charge of harbouring the prisoner, No. 6.

Prisoners, Nos. 2 to 12 and 15 were convicted by the sessions judge of dacoity and receipt of plundered property, knowing it to be such. Of these, Nos. 3, 10 and 15, were not charged with the latter offence, nor was any property recovered from them; they are therefore entitled to an acquittal on the 3rd count.

The prisoners Nos. 1, 11 and 12, have not appealed against the sessions judge's sentence.

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Case of
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Before the sessions judge prisoner, No. 1, claimed the property found on him, but had no witness to adduce.

No. 2, could not account for the property, some nine articles being found in his possession, and pleaded *alibi*.

Nos. 3 to 10, having confessed before the magistrate, pleaded *alibi*.

No. 3, that he was at enmity with prosecutor and *alibi*.

No. 4, *alibi* and claimed the property deposited with his father, No. 19, but named no witnesses.

No. 5, claimed the property, but cited no witnesses.

No. 6, also claimed the property which he had buried, claiming it as his own.

No. 7, did not claim the property as his own which was found on him.

No. 8, similarly laid no claim to the property and summoned witnesses to good character.

No. 9, also pleaded good character.

No. 10, the same and *alibi*.

Nos. 11 and 12, have not appealed, the former says he got the property from No. 8, and pleads *alibi*, the latter claims the property found with him.

No. 15, is reported to have confessed in the mofussil only; he pleaded *not guilty* before the magistrate, and no property was found in his possession.

Prisoner No. 16, pleaded *alibi* and claimed the property and cited witnesses, but they did not establish his plea as to the property.

Prisoner No. 19 father of No. 4, admitted that sundry articles were thrown by him into the water, alleging that the house was attacked and he did this in the alarm.

The Court, having carefully considered all the evidence on the record, are of opinion that the prisoners have been proved guilty of the offences charged against them, respectively, save as regards the prisoners Nos. 3, 10 and 15, who were convicted not only of dacoity, but also of receipt of stolen property, knowing it to be such, though *not* charged with that offence in the calendar; against the prisoner, No. 15, there is no sufficient proof for conviction; he neither confessed nor was any property found on him. The alleged recognition of him by the prosecutor's mother, as recorded in her mofussil deposition, where the prisoner's name is interlined, and the fact that she is the only witness against him and did not at first mention him before the magistrate in her examination in chief, are not sufficient, in the Court's judgment, to warrant his conviction. He is acquitted and must be released.

The several sentences passed on the other prisoners, convicted by the sessions judge, are, in concurrence with his opinion, confirmed; nothing brought forward in their defence and the evidence adduced in support of it in the sessions court, or in their petitions of appeal to this, would justify either acquittal or mitigation of punishment.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND NOBIN MUSULMANI,

versus

ANUND MOLLAH.

Nuddea.

CRIME CHARGED.—Committing a rape on the person of Nobin Musulmani, prosecutrix.

1854.

Committing Officer.—Mr. J. E. S. Lillie, magistrate of Nuddea.

April 22.

Tried before Mr. A. Sconce, sessions judge of Nuddea, on the 3rd of April, 1854.

Case of
ANUND MOL-
LAH.

Remarks by the sessions judge.—The circumstances of this case may be very shortly described. About 10 in the morning of Sunday the 12th February, Nobin a Mahomedan widow of about twenty-five years of age, and three other women were gathering pepper in two adjoining fields. The prisoner Anund Mollah accosting Nobin, asked her to gather pepper for him, she said she was already employed by another man; he pressed her to go with him, she refused, and, immediately after, he clasped her in his arms, and stifling her cries with one arm, he carried her towards a neighbouring tree, threw her down and, notwithstanding her struggles, committed a rape upon her person.

Prisoner con-
victed of rape,
sentenced to
three years' imprisonment.

These facts are proved by the unvarying testimony of Nobin and the three women, Gurshee, Tuunoo and Nezal.

Chand Mundul the employer of Nobin, whose house was about a beegah off, hearing cries in the field, went out and saw the women standing together in the field, and Anund Mollah under the tree. Nobin told him what had happened. Shortly after, Nobin complained to a village headman Azeem Mullah. There was some talk of compromising the case, and Chand Mundul heard Anund Mollah admit that he had ravished Nobin. I have done wrong, he said *tukseer hoyache*.

Prisoner in his defence said the case was got up by the son of Azeem gomashtha with whom he had a quarrel. He adduced two witnesses; one witness, Toofan, said he had been called by prisoner at 8 in the morning to look at the *doomur* tree, near which the rape occurred, to see if it would do to repair his hackery, there he heard some talk between prisoner and Nobin about gathering his pepper. The second witness, Meajan, makes a similar statement, he too went to look at the tree, but he went alone with prisoner; Nobin and other women were walking in the field, a man a little way off. Without notice of the credibility of these statements, it may be observed that the alleged

1854. successive visits of the witnesses to the pepper field, occurred an hour or two before the commission of the crime.

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Case of
ANUND MOL-
LAH.

I have noticed only one point in the deposition of the prosecutrix, which possibly may be contrary to the truth. She said she was not acquainted with prisoner before he addressed her in the pepper-field. Certainly she lived in the village of Gopalnugur, about two miles off, she came daily to her work in Buthanpore, and it may be inferred from the evidence of Chand Mollah that Nobin and the prisoner were not previously unacquainted with each other. But it is not easy to get a native witness to distinguish between the knowledge of eye-sight, and personal acquaintance.

The jury who sat with me found the prisoner guilty and agreeing with their verdict, I, under the law, beg to submit the proceedings for the consideration and for the sentence of the Nizamut Adawlut.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The sessions judge has fully detailed this case in his letter of reference. I convict the prisoner of the offence charged and sentence him to three years' imprisonment with labor.

PRESENT:

J. DUNBAR, Esq., Judge.

Dinagapore.

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GOVERNMENT AND ANOTHER,

versus

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Case of
SOOJAT ALLEE
and others.

SOOJAT ALLEE (No. 20,) SHEIKH AMEEROOLLAH (No. 21,) FUTTEH MAHUMMUD JEMADAR (No. 22,) SUJIBAN SINGH BURKUNDAZ (No. 23,) CHUTTOO SINGH BURKUNDAZ (No. 24,) MODHOO SINGH BURKUNDAZ (No. 25,) AND MUNSAD PYADAH (No. 26.)

The prisoners, who were all police officers, were convicted of culpable homicide in having tortured a man to death, who had been apprehended on suspicion of having been concerned in dacoity.

CRIME CHARGED.—1st count, wilful murder of Bhadoo Nussou; 2nd count, accomplices in the murder of Bhadoo Nussou.

Committing Officer.—Mr. E. C. Craster, officiating joint-magistrate of Maldah.

Tried before Mr. James Grant, sessions judge of Dinagapore, on the 9th February, 1854.

Remarks by the sessions judge.—The prisoners in this case belonged to the establishment of thannah Poorsa in the district of Dinagapore, and the deceased was apprehended in the district of Maldah on suspicion of having been concerned in a dacoity in the former district, on the 4th of November, 1853.

The deceased was apprehended on the 14th of November in

the district of Maldah by the acting darogah, jemadar and burkundazes (Nos. 21 to 26.) He was seized in his house towards the afternoon, and it appearing from marks in the floor that property had recently been dug up from it, he was bound hand and foot and beaten. The darogah (No. 20,) arrived after dusk, struck the deceased several times with a whip on the back and had him taken to a neighbouring house to produce two *thalees* (brass plates), which not being forthcoming, he was brought back and then taken with other dacoity prisoners to the house of the village Mundul, where the party put up for the night in the *gwalee* or cattle-shed. About 9 P. M. the darogah (No. 20,) directed the burkundazes to get the plundered property without delay from the deceased, who was accordingly beaten until he agreed to produce it from the village tank, where he was taken by the prisoners Nos. 20, 23 and 25. No property being found there, he was taken to his house or rather to that of Arman, on whose premises he lived as a *khossa ryot*, and brought out two *thalees* and some silver ornaments which he made over to the darogah. The dacoity prosecutor claimed the property, and the deceased while being taken back towards the *gwalee* was beaten to give up more property, until he fell senseless, when one of the burkundazes asked for instructions and was ordered by the darogah (No. 20,) to bring him as he best could or to sling him. A bamboo was provided on which he was slung, tied hand and foot and so carried at midnight to the *gwalee*, where it was discovered that he was dead. It may be as well to mention that deceased and Arman lived in the same place, and that the Mundul's cattle-shed and village tank were within a short distance of it. It appears from the evidence that deceased was in the first instance beaten by the mohurrir or acting darogah (No. 21,) and his party; that on the arrival of the darogah in the early part of the night, he was again beaten at his own and a neighbour's house and in the cattle-shed, from which he was able to walk and to which he was carried back dead. The civil assistant surgeon states "that death was caused by congestion of blood in the brain from torture by severe pressure, and that simple beating without some such process as *bansdullah* would not cause the appearances he found, without more decided external marks." It is clear from the evidence generally, that the deceased was severely beaten in the first instance and most unmercifully in the cattle-shed, until he asked for water to drink and promised to produce property from the tank, apparently in the hope of obtaining some water, but the beating was evidently performed skilfully by sharp raps on the joints, punching and poking with "*lattees*," so as not to leave external marks and there is no evidence to any thing in the shape of "*bansdulla*" torture, before the deceased was taken away from the "*gwalee*." I am satisfied from the evidence of the witnesses

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Case of
SOOJATALLAH
darogah and
others.

1854.

April 22.

Case of

Soojat Allee
darogah and
others.

* No. 2 Bunjah.
" 3 Deibar.
" 12 Jhuggoo.

noted in the margin,* that the torture was inflicted after the deceased fell in the way from "Arman's" house and that the object was to ascertain whether

he was shamming or not. The witnesses were at some distance in the dark and "*thela-thelee*" with "*lattees*," trying to push the deceased up, could not easily be distinguished under the circumstances from rolling two "*lattees*" fastened together down the thigh and leg. I do not think from the evidence that the darogah (No. 20) returned to where the deceased fell, and the burkundazes Nos. 23 and 25, by whom the torture was inflicted, must have had recourse to it of their own accord. I have gone somewhat into detail to shew the respective degrees of guilt of the prisoners, with reference to which I consider them deserving of punishment. The prisoners do not deny the mal-treatment, which ended in the death of the deceased, but each endeavours to screen himself at the expense of his accomplices. The darogah pleading that he had not taken charge. The acting darogah that he had made over charge, and the others that they had no discretion, but it is evident that each acted his part without the slightest demur, until their unfortunate victim was found to be dead. There was no recorded ground for his apprehension, and

† No. 18.

from the evidence of "Arman"† it seems that there was no person with the party who knew him by sight, and that the property, which he in extremity produced from Arman's house to stay the maltreatment, belonged to the witness. There can, however, be no doubt that the object of the prisoners was not murder, but to extract from the deceased, plundered property and the names of his accomplices. The *futwa* of the law officer convicts the prisoners No. 23, Sujibun Singh, and Modhoo Singh No. 25, of culpable homicide, and Soojat Allee No. 20, Sheikh Ameeroollah, No. 21, Futteh Mahomed No. 22, and Chuttoo Singh No. 24, as accomplices, in which I concur and recommend that they be sentenced to imprisonment as follows: Soojat Allee, No. 20, Sujibun Singh No. 23, and Modhoo Singh No. 25, to fourteen years, Sheikh Ameeroollah No. 21, and Futteh Mahomed No. 22, to seven years with labor in irons, and Chuttoo Singh No. 24, to three years and to pay a fine of 20 rupees in lieu of labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) Moulvee Aftabooddeen and Moonshee Gholam Ahmud appeared on behalf of the prisoner Soojat Allee, Baboo Ramapersad Roy for Government.

That the deceased died in consequence of the maltreatment he received at the hands of the police, at the time and place indicated in the evidence, is not denied. The pleaders who appear for Soojat Allee, however, wish to make it appear, that he himself did not make use of any fatal violence. Even if this were

true, it would not avail him. He, as darogah, was bound at once to put a stop to all ill-usage on the part of his subordinates, but so far from doing this, the evidence is clear and consistent as to his having directed and permitted the use of force. It goes further, however, and proves that he personally struck the man several times with a whip. The case is one of much cruelty. A man in sound health, is laid hold of, on suspicion of dacoity towards night-fall, and in less than six hours, the life is beaten out of him. The mohurir, the jemadar and Chuttoo Singh burkundaz began the beating, but it was subsequently carried on so perseveringly by the other prisoners, till death relieved the sufferer, that I think the sessions judge has rightly drawn a distinction between them in laying down the measure of punishment he recommends. I concur in the conviction and in the sentence proposed, and sentence the prisoners accordingly.

1854.

April 22.

Case of
SOOJAT ALLEE
darogah and
others.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

NUBBYE GHOSE.

Hooghly.

CRIME CHARGED.—Having belonged to a gang of dacoits.

1854.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

April 24.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 1st April, 1854.

Case of
NUBBYE
GHOSE.

Remarks by the officiating sessions judge.—The prisoner, Nubbye Ghose, No. 5, was committed for trial by Mr. E. Jackson, commissioner for the suppression of dacoity, upon a charge of having belonged to a gang of dacoits, on his own full confessions.

Prisoner con-
victed of hav-
ing belonged
to a gang of
dacoits, sen-
tenced to trans-
portation for
life.

He pleaded guilty at the trial, and admitted his previous confessions, the latter of which, made on the 21st January, 1854, was formally attested by the witnesses.

These confessions prove the prisoner to have been for eight or nine years engaged in the commission of dacoity, in association with Bungshee Sirdar, Manick Ghose and others, during which time, he committed upon river and land in the Burdwan, Jessore and Nuddea districts, altogether twenty-five dacoities.

There is no evidence against the prisoner beyond his own confessions, but as these are found to have been voluntary and are corroborated by the facts of the several dacoities, as deposed to at the time of their occurrence, I consider the charge established

1854. against him, and with reference to the intention expressed by the commissioner, of retaining him as an approver, I have the honor to recommend that sentence of imprisonment for life be passed upon him.

April 24.
Case of
NUBBYE
GHOSE.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I convict the prisoner of having belonged to a gang of dacoits, on his own full confession and plea of guilty. I sentence him to imprisonment for life, in transportation, with hard labor and irons.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

NOYUN MUSSALMAN.

Hooghly.

1854.

April 24.
Case of
NOYUN MUSSALMAN.

CRIME CHARGED.—Having belonged to a gang of dacoits. **Committing Officer.**—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 1st April, 1854.

Prisoner convicted of having belonged to a gang of dacoits, sentenced to transportation for life.

Remarks by the officiating sessions judge.—The prisoner Noyun Mussalman, No. 18, was committed for trial by Mr. E. Jackson, commissioner for the suppression of dacoity, upon the charge of having belonged to a gang of dacoits, on his own full and complete confessions.

He is a resident of Sahibgunge, zillah Nuddea, aged about forty years, and pleads guilty to the charge, fully admitting the confessions made by him before the commissioner, from which it appears that he was associated with Manick Ghose, Ramcoomar Domes, Harree and others, and was engaged in altogether twenty-three dacoities, some on the river, some on land, during the last seven or eight years.

The confession of the 14th February last, has been formally attested by the witnesses at the sessions, and there being no doubt of it and the more lengthy confession of the 30th January and subsequent dates being voluntary, and the facts stated being corroborated by the proceedings in the cases alluded to, I convict the prisoner of the crime charged, and with reference to the intention expressed by the commissioner, of retaining him as an approver, I have the honor to recommend that a sentence of imprisonment for life be passed upon him.

Remarks by the Nizamut Adawlut.—(Present : Mr. B. J. Colvin.) I convict the prisoner of having belonged to a gang of dacoits, on his own full confession and plea of guilty. I sentence him to imprisonment for life, with labor in irons, in transportation.

1854.

April 24.

Case of
NOYUN MUS-
SALMAN.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT,

versus

DERASUTOOLLAH.

Dacca.

1854.

April 28.

Case of
DERASUTOOL-
LAH.

CRIME CHARGED.—Culpable homicide of Mussumut Kurran, the wife of the prisoner, by beating her with a split bamboo, from the effects of which she died.

CRIME ESTABLISHED.—Culpable homicide of Musst. Kurran.

Committing Officer.—Mr. W. H. Brodhurst, officiating joint-magistrate of Furreedpore.

Tried before Mr. C. T. Davidson, commissioner with powers of sessions judge, on the 6th February, 1854.

Remarks by the commissioner.—The prisoner is charged with culpable homicide. It appears that on the 1st of September last, the prisoner, who had been absent from home a few days, returned and heard from his father that his wife (a girl of about ten years of age) had been continually absenting herself from the house instead of attending to her work, that he beat her in consequence, and that she died during the night. Three witnesses depose to having seen the deceased beaten by her husband. The prisoner confessed both in the mofussil and before the magistrate, that he beat his wife for neglecting to attend to her household affairs during his absence, but urged that she did not die from the effects of the beating. These confessions have been attested before this court. The *post mortem* examination, conducted by the sub-assistant surgeon, goes to show that the deceased had received severe injuries from beating and had died from their effects. The prisoner before this court admits having beaten his wife, by way of chastisement, and pleads that she died of cholera, but the plea is not supported. The *fatwa* of the law officer convicts the prisoner of culpable homicide, in which finding I concur, and have sentenced him as described in column twelve of this statement.

Prisoner convicted of the culpable homicide of his wife, sentenced to five years' imprisonment. Appeal rejected.

Sentence passed by the lower court.—Five (5) years' imprisonment with hard labor in irons.

1854. *Remarks by the Nizamut Adawlut.*—(Present: Sir R. Barlow, Baronet.) The prisoner in his petition of appeal to the Court admits that he gave his wife, the deceased, two or three blows with a split bamboo.
- April 28. Case of **DERASUTTOOL-LAH.** The *post mortem* examination, to which the sub-assistant surgeon has deposed, proves, though the corpse was somewhat decomposed, that there were marks on the back and chest of the corpse, congested blood was found in the lungs and the posterior part of the left lung was also ruptured; death was caused by hæmorrhage caused by the rupture of the pulmonary veins and of the left lung; I see no reason to interfere with the sessions judge's sentence.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND SISTEEDHUR DHOBA,

versus

JOYNALL SHEIKH (No. 3.) BAOOLDROSS KYBURT (No. 4.) AND KONAI SHEIKH (No. 5.)

Nuddea.

1854.

- April 28. Case of **JOYNALL SHEIKH and others.** **CRIME CHARGED.**—1st count, committing a dacoity in the house of the prosecutor Sisteedhur Dhoba and robbing therefrom property to the value of Rs. 78-4; Prisoners Nos. 3 and 4, assaulting and beating the witness Tarun Chunder Chatterjea; 2nd count, plundering, in the dead of night from the house of prosecutor Sisteedhur Dhoba, property to the value of Rs. 78-4; Nos. 3 and 4, assaulting and beating the witness Tarun Chunder Chatterjea.

Three prisoners convicted of dacoity by the sessions judge acquitted in appeal, owing to the weakness of the evidence.

CRIME ESTABLISHED.—Committing a dacoity in the house of Sisteedhur Dhoba.

Committing Officer.—Baboo Issur Chunder Ghosal, deputy magistrate of Santipore.

Tried before Mr. A. Sconce, sessions judge of Nuddea, on the 28th March, 1854.

Remarks by the sessions judge.—At midnight of Saturday the 17th December last, the door of the prosecutor, while he was sleeping with his wife and children, was burst open by dacoits. Four entered and pillaged the premises; they seized all the household utensils that were lying loose, stripped off the ornaments of prosecutor's wife and child, made prosecutor open a small box in which were eight rupees and other articles, and made him try to open another larger box, but he could not turn the lock, and they burst it open, carrying off a quantity of new cloth *sarees*, *dhoties* and *chudurs*, in all they carried off about

Rs. 78-4 worth of property. Besides the four dacoits, whom prosecutor recognized as residents of a closely adjoining village, he observed that others were outside armed with *lattees*.

The charge against the three prisoners depends entirely upon their identification by the prosecutor and witnesses. It was a bright moonlight night, besides which the dacoits had torches. Next morning prosecutor sent intimation to the thannah by the chowkeedar that he had recognized the dacoits, and immediately the darogah came, on the 18th December, the prosecutor named to him, as he does now, the three prisoners and a fourth man named Sadee Sheikh.

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April 28.

Case of
JOYNALL
SHEIKH and
others.

When the dacoity was going on, Tarun Chunder Chatterjea, a neighbour of the prosecutor (living twenty yards off) was awoke by the noise. After a little while he went out and having met Bhowun Chunder Mookerjea, they both turned round by another neighbour Adhonath's house. There they met six dacoits carrying off their booty. One dacoit aimed a blow at Tarun Chunder, which he warded off, another, Baooldoss, whom he knew, struck him on the head with a *lattee*; he seized him and was then struck on the arm by the prisoner Joynall which made him let go Baool. The dacoits then passed off. Besides Baool and Joynall this witness identified also the prisoner Kunhayee, who had a bundle on his head. Similar testimony this witness gave to the darogah, and his statement is fully corroborated by the witness Bhowun Chunder, who in addition recognized the man Sadee Sheikh, named also by the prosecutor, but not under trial. A third witness Chunder Ghose, who was sleeping in one of Adhonath's houses within a yard of the spot, where Tarun Chunder came upon the dacoits, recognized Baool and Joynall.

The prisoner Joynall was chowkeedar of the neighbouring village of Bussuntapore; for him four witnesses were examined, of whom two say they went his rounds with him on the night of the dacoity between ten and four, and they and another ascribe the charge to the enmity of the witness Tarun Chunder, because the chowkeedar opposed Tarun's cattle trespassing on his crops. For Baool two witnesses say they saw him at home three times during the night of the dacoity; they and two others say he was respectable. For Kunye one witness says he smoked with him at four in the morning, another says Kunye smoked with him at ten at night; they and two others speak to his respectability.

The evidence for the prosecution appeared to me unexceptionable, and I convicted the three prisoners of committing dacoity in the house of Sisteedhur Dhoba.

Sentence passed by the lower court.—Prisoner No. 3 fourteen (14) years' imprisonment and two (2) years in lieu of corporal punishment being in aggregate sixteen (16) years with labor

1854.

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Case of
JOYNALL
SHEIKH and
others.

and irons in banishment. Prisoners Nos. 4 and 5, ten (10) years each with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes). I think there are good reasons to doubt the evidence in this case.

The dacoity is said to have taken place on the 17th of December, and the chowkeedar, who reported it to the police on the following day, said that neither he nor any of the villagers had seen any thing of the dacoits, except the prosecutor and the witness No. 1, Tarun Chunder. The darogah reached the village on the 18th, and on the 20th, reported that the prosecutor had recognized the three prisoners and another, and that *two* of them had also been recognized by Tarun Chunder, that he has in consequence arrested the accused, who denied the charge and no property was found in their possession, and up to that time he did not think the charge was well proved against them. After this, Tarun Chunder's evidence was taken down and he gave the names of two other villagers who, he said, had seen the dacoits and recognized them at the same time as himself. These two witnesses Nos. 2 and 3, were then examined, and No. 3 said he recognized prisoners Nos. 3 and 4, and No. 2, named all of them. Witnesses thus suddenly turning up with such important information is very suspicious, as they are neighbours of the prosecutor, and it is reasonable to suppose would not have withheld their knowledge for two days, while the police were making enquiries in the village.

The prisoners are not known to be bad characters of any notoriety, nor to have been seen together and in any other way to have deserved suspicion on the night in question. I consider the evidence not trustworthy and acquit them.

PRESENT :

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

UPOORBOKISTO MUNDUL (No. 1,) DHUNUNJOY
MUNDUL (No. 4,) PREM CHUND CHOWKEEDAR
(No. 5,) GOVIND SINGH BURKUNDAZ (No. 6,) AND
MUMREZ KHAN BURKUNDAZ (No. 7.)

24 Pergun-
nahs.

1854.

CRIME CHARGED.—1st count, wilful murder of Manik Bangal against Nos. 1 and 2 ; 2nd count, being accessory after the fact to the above crime against Nos. 4 to 7.

April 28.

Committing Officer.—Mr. E. A. Samuells, magistrate of the 24-Pergunnahs.

Case of
UPOORBO-
KISTO MUN-
DUL and
others.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs on the 28th March, 1854.

Remarks by the officiating additional sessions judge.—Before I enter upon the history of the case, I must apprize the Court that with the view of having the truth more satisfactorily developed, I availed myself of discretion vested in this court under the provisions of Clause 2, Section 5, Regulation X. 1824, to tender a pardon to one Judishti Bide, a prisoner committed for trial, on condition of his making a full, true and fair disclosure of all the circumstances connected with the murder involved. Judishti as will be seen, is clearly not the principal in the crime and his evidence as a witness on the trial, has proved of much importance.

The prison-
ers were ac-
quitted, for
want of suffi-
cient evidence;
held that cer-
tain of them
charged with
accessaryship
after the fact,
should have
been punished
instead, under
the general
laws for neg-
lect of duty.

The deceased appears to have been a labouring man residing in the prisoner's village, and working for his bread. He had lately got quarters in the house of the witness Gopeenath Huldar and was there when he was cut and wounded. In Gopeenath's family was a widow of the name of Himobuti, with whom the prisoner Upoorbokisto Mundul had carried on an intrigue before the deceased's arrival. Some say that Himo had been *en- ciente* in consequence of this intimacy, and had temporarily left the village, and that when she came back, no traces of that condition were visible in her appearance. The connection, however, was resumed on her return. About this time the prisoner seems to have had suspicions that Himo had transferred her affections and that the deceased was as much, if not more, favored than himself. On the day of the wounding the prisoner saw Himo and the deceased in close conversation at the door of a cow-shed.

1854. He was much incensed and going up to her threatened to kill

April 28. * Witness No. 12. either the deceased or one of her brothers. The witness noted in the

Case of margin* will prove this fact.
 UPOORBO- Between the hours of 10 and 11 at night the deceased, who
 KISTO MUN- was sleeping under the same curtains as
 DUL the witness marginally† indicated, woke
 and others. † Witness No. 19.

up with a cry, calling out that he had been wounded. The scream roused the inmates of the house and one after another they all collected at the spot. They found the deceased bleeding profusely from an incised wound on the head and partially insensible. As soon as he was sufficiently recovered to speak, they asked him who had wounded him and he named Upoorbokisto to No. 1, and the approver Judishti Bide. The witnesses enumerated in the margin‡ speak to these facts.

‡ Witnesses Nos. 12, 13, 14, 15, 17 and witness No. 1 of Calendar No. 1.

The approver Judishti Bide, who confessed both before the police and the magistrate, whose confessions are consistent throughout and accord in all essential points with his statement before this court, given in solemn declaration and in their purport are an admission of complicity, only to the extent of a guilty knowledge of and presence at the commission of the deed, proves that the prisoner Upoorbokisto Mundul, No. 1, struck the fatal blow with a *dao* while the deceased was asleep.

After this occurrence had taken place the villagers seemed resolved to suppress it, and the police appear to have aided and abetted the concealment. A story was put in circulation that the deceased had been accidentally wounded by a hatchet, while felling timber, and formed the substance of the report made by the neighbouring pharidars, the prisoners Gobind Singh No. 6, and Mumrez Khan No. 7, to the thannah after a pretended investigation. It does not very clearly appear when the pharidars first came, as the evidence is somewhat obscure on this point, but they are said, though knowing the real state of the case, to have completely fallen into the views of the villagers relative to the affair and taken hush-money to suppress and misrepresent it. The prisoner Prem Chand Chowkeedar No. 5, is the village watchman and the prisoner Dhunnunjoy Mundul No. 4, one of the village head-men, and moreover, the father of the prisoner Upoorokisto. They took an active part in the suppression, particularly the latter, for obvious reasons. The deceased survived the wound about thirteen days, and when he died the body was removed and buried in a secret place. The witnesses above marginally noticed and one or two others will be found to speak to these events.

As soon as the darogah heard of the deceased's death, he appears to have deputed a police jemadar to make enquiry and

report, but this officer's conduct seems to have been as criminal as that of the pharidars, and he is also said to have colluded with the villagers and given currency to the falsehood circulated on the occasion. I perceive that this official has been dismissed by the magistrate.

1854.

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Case of
UPOORBO-
KISTO MUN-
DUL and
others.

This affair would in all probability have never seen the light

* Witness No. 20.

had not the witness marked in the margin,* presented a petition to the magistrate and made disclosures relative to the deceased's wound and subsequent death. The magistrate acted upon the information, and directed the darogah to proceed to the spot and make enquiry. That officer did so. The truth could no longer be concealed. The body was exhumed and the culprits taken into custody. Although the body was in an advanced state of decomposition when disinterred by the darogah, yet the head clearly exhibited a deep incised wound, which is noted in the

record of the inquest held by that officer
† Witnesses Nos. 1 and 2. and was seen by the witnesses marginally noted.†

The prisoner Upoorbokisto Mundul No. 1, made a full and free confession before the darogah, and admitted that he wounded the deceased with a *dao* while he slept. He stated that he had been led to the deed by having seen the deceased in close conversation with his lover Himobuti, at the door of a cow-shed and the belief that she had transferred her affections to him. He added that he had consulted with the approver Judishti, who had counselled him and stood by while he struck the blow.

‡ Witnesses Nos. 4 and 5. This confession is proved by the witnesses mentioned in the margin.‡

The prisoners deny the charge before this court and set up various kinds of defence. The prisoner Upoorbokisto Mundul, No. 1, alleges that the deceased wounded himself accidentally while felling timber, that his mofussil confession was extorted, that the deceased was carrying on an intrigue with the witness No. 13, the daughter of his host, who might have attacked and wounded him and that it is quite impossible that he could in the dark have distinguished between the deceased and his bed-fellow, the witness No. 20, Gorachand

§ Witnesses Nos. 21, Bagh. The witnesses marked in the margin§ were examined on his behalf, 22, 23 and 24.

but failed to prove any of the pleas set up by him.

The prisoner Sumbhoo Chunder Banerjee No. 3, avers that he sent word to the phanri and that the police officers came on that information, that he was not present when the deceased was wounded and heard after his death that the villagers had made away with the body. He calls witnesses to prove that he is unpopular in the village and that the inhabitants have conspired, on this occasion, to bring him into trouble as they did in 1852.

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Case of
UPOOROOK-
KISTO MUN-
DUL and
others.

* Witnesses Nos. 26, 27, The parties noted in the margin,* 28, 29, 31. and three other persons, gave good evidence on behalf of the prisoner.

The prisoner Dhununjoy Mundul No. 4, repudiates the charge and declares himself the victim of conspiracy. I examined the

† Witnesses Nos. 32, 35. witnesses in the margin,† in proof of the defences, and all they stated was that the prisoner did not help to remove the body.

The prisoner Premchand Chowkeedar No. 5, pleads, that he was prevented giving information to the police by the prisoner Dhununjoy Mundul No. 4, and calls witnesses in proof of plea. The witnesses enumerated in the margin‡ were examined on his

‡ Witnesses Nos. 37, 38. behalf, but failed to prove the defence pleaded.

The prisoners Gobind Singh Burkundaz No. 6, and Mumrez Khan Burkundaz No. 7, stand by and maintain the integrity of their report, alleging that they represented matters in the light they were communicated to them. They call no witnesses.

The prisoner Ramsaugur Kurmocar No. 1, of calendar No. 1, affirms, that he recommended that immediate notice should be sent to the police and calls witnesses to prove that he did so.

§ Witnesses Nos. 38, and The fact is established by his wit- 3 of calendar No. 1. nesses§ as well as those examined for the prosecution.

The *futwa* of the law officer acquits all the prisoners on the ground, among others, that the evidence cannot be made against them in consequence of the witnesses having themselves participated in the crime to which they depose, namely, the suppression of the affair.

I dissent from the finding in respect to the prisoners Nos. 1, 4, 5, 6, 7. The direct testimony of the approver Judishti Bide and the presumption created by the facts of the prisoner's moufussil confession, his intimacy with the woman Himobuti, his belief that she had transferred her affections from him to the deceased, the bitter feeling engendered by the thought, the anger displayed, the threat pronounced at their being discovered together on the day of the wounding, and his being named by the deceased as the assailant, immediately after the wound had been inflicted, are to my mind conclusive of Upoorookisto Mundul's guilt, and I therefore convict him of the murder. But as the deceased survived the injury thirteen days, and its fatal termination might in some respects be attributable to the want of proper medical and surgical aid, I cannot recommend a capital sentence. I therefore propose that he be sentenced to transportation for life with labor in irons. It is abundantly evident from the persons examined on the trial and the magistrate's record that the phanridar and chowkeedar, the prisoners Gobind Singh, Mumrez Khan and Premchand Sirdar, have been guilty of gross

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April 28.

Case of
UPOORBO-
KISTO MUN-
DUL & others.

culpability and evinced a most grave and criminal dereliction of duty. Had they discharged their obligations to the State, a human life might have been preserved, or a murderer paid the just penalty of his awful crime. I convict them of being accessories after the fact in concealing a murder, and would sentence them to seven years' imprisonment with labor in irons. I also convict the prisoner Dhununjoy Mundul of the like heinous offence and, under all the circumstances of the case, propose that he be sentenced to four years' imprisonment with labor and irons. I concur in the release of the prisoners Sumbooh Chunder Banerjee No. 3, and Ramsaugur Kurmoker No. 1, of calendar No. 1. The former appears to be obnoxious to the villagers, and I am by no means certain that they have not implicated him in the matter unjustly. It is clear from the evidence that he was the subject of a cabal on a former occasion, and I therefore receive with some reservation the testimony brought against him. He is said moreover by the witnesses for the prosecution, to have been the first to send notice to the police, after the occurrence, and the persons cited to his defence prove generally the pleas he set up; and against the latter there is not a tittle of evidence; so far from it, he is proved to have taken a prominent part in counselling that the matter should be at once reported to the authorities; I therefore order the discharge of these prisoners.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin). The Court, after a careful perusal of the record, and hearing the Government pleader, Sumboonath Pundit, for the prosecution, and Sreenath Sen, for the prisoners Nos. 1 and 4, and Mr. Norris, for prisoner, No. 7, are of opinion, that there is proof satisfactory, that the deceased, Manik, was wounded on the head by a cut with a *dao*, in the night, while he was sleeping in his bed; and that he died thirteen days afterwards. There is not however proof so satisfactory as to warrant a conviction, against the prisoner, No. 1, Upoorbokisto, to his being the person who wounded the deceased. He denied his alleged confession at the thannah, both before the magistrate, and at the sessions: and unless fully corroborated, it is not trustworthy. The evidence of the approver, Judishti Bide, is so totally at variance with his confession at the thannah, and his answer before the magistrate, that no confidence can be placed on it. In the two former, he says, he was forced by threats to accompany prisoner No. 1, who told him he was going to kill the deceased. In the latter, he deposes, that he *followed* the prisoner, No. 1, *without* his knowledge, apprehending that he was going to kill the woman with whom he intrigued. The rest of the evidence against prisoner, No. 1, as to the deceased declaring whom wounded, who struck him, is so full of discrepancies, that it cannot be believed with any safety. The Court, therefore, in concurrence with the *futwa*, acquit prisoner, No. 1, of the murder.

1854. The prisoner, No. 4, is not proved to be one, on whom the duty of reporting to the police, rested. If however it were his duty, both he and the chowkeedar, prisoner No. 5, who says he was prevented from reporting, should have been punished under the general laws for neglect of duty, not charged with being accessories to murder. As regards the prisoners, Nos. 6 and 7, there is no positive credible proof, that they knowingly reported falsely to the thannah, the facts of the case. The Court, therefore, acquit likewise the above four prisoners, and order their re-

April 28.
Case of
UFOORBO-
KISTO MUN-
DUL & others.

PRESENT :

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND AGGYARAM,

versus

CHAND MAHOMED.

Rungpore.

1854. CRIME CHARGED.—1st count, committing dacoity attended with wounding in the house of Aggyaram Sha, the prosecutor, and plundering property therefrom, value Rs. 1,507-15-5g.; 2nd count, knowingly having in possession property acquired by the above crime; 3rd count, having belonged to a gang of dacoits.

April 28.
Case of
CHAND MA-
HOMED.

CRIME ESTABLISHED.—Dacoity with wounding in the house of Aggyaram Sha, the prosecutor, and plundering property therefrom, value Rs. 1,507-15-5.

There was no
proof that the
prisoner's con-
fessions had
been extorted.
Appeal reject-
ed.

Committing Officer.—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, sessions judge of Rungpore, on the 2nd March, 1854.

Remarks by the sessions judge.—From the statement of the prosecutor and the evidence adduced, it is established that about fourteen or fifteen dacoits entered into his house, at about 12 o'clock on the night of the 18th of Pous, and property value Rs. 1,507-15-5, carried off; the dacoits detained the prosecutor, his son and his servant in the house till they remained there and when they left the house, prosecutor and his son followed them; the prisoner No. 2, tripped and fell, and prosecutor and his son apprehended him with the property Nos. 1 to 7. Witnesses Nos. 2 and 4, saw the prisoner apprehended, in the house of the prosecutor.

He pleads guilty in the foudary court, but denies all knowledge of dacoity in this court.

In his defence he called witnesses to prove the respectability of his character, but they proved nothing in his favor.

I tried the case alone under Act 24, of 1848, convicted the prisoner of dacoity with wounding, and sentenced accordingly. 1854.

Sentence passed by the lower court.—Imprisonment with labor and irons in banishment for fourteen (14) years. April 28.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The prisoner has urged in appeal, that his confession before the darogah was extorted and that he was tutored to repeat before the magistrate, but there is no proof of this. He was caught and accused of the dacoity, immediately after its occurrence, and is an old offender, having once before been imprisoned for fourteen years. I see no reason for interference with the sentence passed upon him. Case of CHAND MAHOMED.

PRESENT:

J. DUNBAR, Esq., Judge.

GOVERNMENT,

versus

SHEIKH BANOO (No. 1.) GOOROODOSS ALIAS GOOROO CHURN DOOLOOEE (No. 2, APPELLANT,) AND SHEIKH KALOO (No. 3.) 24Pergunnahs.

CRIME CHARGED.—Going forth with a gang of robbers for the purpose of committing a robbery in the house of Isur Chunder Moody. 1854.
April 28.

CRIME ESTABLISHED.—Going forth with a gang of robbers for the purpose of committing robbery in the house of Isur Chunder Moody. Case of GOOROODOSS alias GOOROO CHURN DOOLOOEE (appellant,) and others.

Committing Officer.—Mr. E. A. Samuells, magistrate of the 24 Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24 Pergunnahs, on the 17th February, 1854.

Remarks by the officiating additional sessions judge.—An attempt to commit dacoity was made in the house of the prosecutor, in the month of June last, when about ten or twelve persons entered the village and proceeded to the premises; on the approach of the robbers the prosecutor and his brother made their escape and alarmed the inhabitants, on which the dacoits fled without being able to effect their purpose. One Khooji Mullah, witness No. 12 of the calendar, who happened to be on his way to Calcutta at the time, heard the noise and hubbub consequent on the attack, and met some ten persons coming along the road, having their loins bound, among whom he distinctly recognized the prisoners who were previously known to Three prisoners convicted of going forth with a gang of robbers, for the purpose of committing robbery, sentence to seven years' imprisonment. Appeal rejected.

1854.

April 28.

Case of
GOOROODOSS
alias GOOROO
CHURN DOO-
LOOEE (ap-
pellant,) and
others.

him. Another witness for the prosecution proves, that all the prisoners were seen consulting together in the house of the prisoner Gooroodoss alias Gooroo Churn Doolooee, a man of notoriously bad character, a day or two before the occurrence took place. They were arrested on the above evidence and confessed both before the police and the magistrate. Their confessions are consistent and amount to complicity in the act of going forth in a gang, for the purpose of committing dacoity and making the attempt to do so. The prisoners deny the charge before the court and call witnesses to prove the pleas severally set up, which are *alibi*. I examined twelve persons on their behalf, but their evidence is by no means of an exculpatory character. The *futwa* convicts of the charge, and I concur in the finding.

Sentence passed by the lower court.—To be imprisoned with labor and irons for seven (7) years each.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) I find no cause for interference, and confirm the sentence.

PRESENT :

J. DUNBAR, Esq., Judge.

GOVERNMENT,

versus

RAMCHAND PUNDIT (No. 1,) SHOODHARAM DOO-
LOOEE (No. 2, APPELLANT,) PUNCHOO DOOLOOEE
(No. 3, APPELLANT,) AND SHOOBUL DOOLOOEE (No. 4,
APPELLANT.)

24Pergunnahs.

1854.

April 28.

Case of
SHOODHARAM
DOOLOOEE and
others.

CRIME CHARGED.—Going forth with a gang of robbers for the purpose of committing robbery in the house of Brindabun Mundul Jalia.

CRIME ESTABLISHED.—Going forth with a gang of robbers for the purpose of committing robbery in the house of Brindabun Mundul.

Committing Officer.—Mr. E. A. Samuells, magistrate of the 24 Pergunnahs.

Similar to
preceding
case.

Tried before Mr. J. H. Patton, officiating additional sessions judge of the 24 Pergunnahs, on the 21st February, 1854.

Remarks by the officiating additional sessions judge.—On the night of the 3rd June last, the prisoners Shoodharam Doolooee No. 2, and Punchoo Doolooee No. 3, who are kept under the surveillance of the police in consequence of being men of suspicious character, were found absent from home. Search was made for them in all directions and it was arranged that the

chowkeedars, of the quarter in which they reside, should be on the alert all night and lie in wait for and arrest them on their return. About 2½ A. M. the prisoner Punchoo made his appearance and was seized, with a boat rudder on his shoulders, by the witness Bhujohoree chowkeedar. Simultaneously almost with this seizure, the prisoner Shoodharam was apprehended, at a short distance off by the witness Durponarain chowkeedar. He had a pot of toddy on his head and was in company with the prisoner Shoobul Doolooee No. 4, and one Madhub Purkait, who effected their escape. Both the prisoners then and there admitted having gone forth with the intent to commit a dacoity, in the house of Brindabun Mundul, and repeated their confessions at the thannah, where a record of those statements was duly made, as also of the confession of the prisoner Shoobul Doolooee No. 4, who was arrested the following day. His recognition by the witness Durponarain was very complete, as on his being challenged by the policeman when first encountered, he gave up his name, as did his associate. All these mofussil confessions agree and are consistent in their detail. It does not very clearly appear on what grounds the prisoner Ram Chand Pundit No. 1, was taken into custody, but the magistrate's record shows that he admitted crime, both before him and the police, and I have no reason to doubt the truth of those confessions. The prisoner, No. 1, is convicted on his mofussil and foudary confessions; the prisoners Nos. 2 and 3, on their mofussil confessions, their arrest at night after having been found absent from home and laid wait for, their clear admission of guilt at the moment of arrest; and prisoner No. 4, on his mofussil confession and recognition by the witness No. 2, at the time of his apprehending the prisoner No. 2. They deny the charge before this court and call witness to prove their respective pleas, which are frivolous and which the evidence cited, fails to establish to satisfaction.

Sentence passed by the lower court.—To be imprisoned with labor and irons for seven (7) years each.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The prisoners, who appeal, assert that at the time charged in the indictment, they were in jail. This is a new thought, just put forward, on the chance of something turning up. No such plea was urged either at the trial or during any of the preceding stages of the case. The sentence is confirmed.

1854.

April 28.

Case of
SHOODHARAM
DOOLOOEE and
others.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

KANAI CHOWDRY AND GOVERNMENT,

*versus*Moorsheda-
bad.

RAMSOONDER ALIAS LENGRU GHOSE.

1854.

April 28.

Case of
RAMSOONDER
alias LENGRU
GHOSE.Prisoner con-
victed of high-
way robbery
with assault
and slight
wounding, sen-
tenced by the
sessions judge
to seven years'
imprisonment.
Appeal reject-
ed.

CRIME CHARGED.—Having assaulted and slightly wounded the prosecutor Kanai Chowdry on the highway, and having then and there violently and feloniously taken and carried away from the person of the said prosecutor Co.'s Rs. 32 in silver and Rs. 5 in copper coins.

CRIME ESTABLISHED.—Having assaulted and slightly wounded the prosecutor on the highway, and having then and there violently and feloniously taken and carried away from the person of the said prosecutor Co.'s Rs. 32 in silver and Rs. 5, in copper coins.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 13th February, 1854.

Remarks by the sessions judge.—On the 12th Pous, 1260, or 26th December, 1853, a little before sunset the prosecutor was returning to his house at Bamonnia from his shop at Mahajuntolee, having with him 32 Rs. in silver and 5 Rs. in copper coins, when he was followed at Hunnomantollah in the way by the prisoner, who proceeding with him a short distance, attacked him with a *lattee*, and on the prosecutor giving the alarm, a second time struck him with it on the head, upon which the prosecutor fell senseless on the ground, and the prisoner decamped after robbing him of the money he had in his possession.

Sunkur Ghose, servant of the prosecutor, who was following behind, soon after joined him and with the assistance of some other passengers, who happened to be on the spot at the time, helped the prosecutor to rise. The prisoner was seen by the servant running away after knocking down the prosecutor. The circumstantial witnesses deposed that they saw the prosecutor lying wounded and a person running away with a *lattee* in his hand. The prisoner evaded arrest at the time, but on the 7th January, 1854 appeared before the magistrate of his own accord.

It was proved by the evidence for the prosecution that on the evening mentioned, the prosecutor was attacked by the prisoner on the high road and knocked down by the blows of a *lattee*, and that the prisoner made off with the money the prosecutor had with him at the time.

The evidence on the part of the prisoner does not at all exculpate him. The case was tried with the aid of the law officer, who considered the prisoner guilty of the offence with which he stood charged, as stated in the calendar, upon violent presumption, and declared him liable to "*akoobut*;" concurring with him in that opinion I sentenced the prisoner as stated in the proper column.

1854.

April 28.

Case of
RAMSOONDER
alias LENGAU
GHOSH.

Sentence passed by the lower court.—To be imprisoned for the period of (7) seven years with hard labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.) On appeal by the prisoner, I see no ground for mitigation of sentence. The blows inflicted by the prisoner rendered prosecutor senseless, upon which prisoner robbed him of the money he had with him.

PRESENT:

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND NUNDORAM BHUR,

versus

VOYRUB ALIAS VOYA BAGDY (No. 1,) SONA BAGDY (No. 2,) NOBIN BAGDY (No. 3,) KALLY SINGH (No. 4,) ROOPCHAND BAGDY (No. 5,) AND BOY KUNTO ROY (No. 7.)

Hooghly.

CRIME CHARGED.—1st count, committing a dacoity in the house of Nundoram Bhur and plundering therefrom property to the value of Rs. 1003-6, on the 8th December, 1853; 2nd count, No. 3, knowingly receiving and keeping in his possession one bundle of thread stolen No. 1.

1854.

April 29.

Case of
VOYRUB alias
VOYA BAGDY
and others.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. K. H. Stephen, deputy magistrate of Serampore.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 15th February, 1854.

Remarks by the officiating sessions judge.—The trial was conducted under the provisions of Act 24, of 1843.

The prisoners pleaded *not guilty*.

The prosecutor's house was attacked by a band of 20 to 25 dacoits, at about 2 A. M. of the night of the 8th December. When they entered the house, prosecutor's wife, hearing the noise roused him, and upon getting up he found ten or twelve men inside his house armed with *lattees*, spears, &c. and some carrying *mussals*; they seized him, beat him and took his keys, with which they opened the boxes and plundered him of orna-

The prisoners' appeal was rejected, the evidence against them being sufficient for their conviction.

1854.

April 29.

Case of
VOYRUB alias
VOYA BAGDY
and others.

ments, clothes, cash, &c. amounting to Rs. 1003-6. He identified the prisoners Nos. 1, 3, 4, 5 and 7 and mentioned their names to the burkundaz of the neighbouring police station, immediately after the dacoity. Prisoner No. 3, recognized by the prosecutor as the person who struck him with a *lattee*, was arrested that night at his house, where the burkundaz found a bundle of thread, identified by the prosecutor as part of the stolen property. The prisoner No. 1, was apprehended on the following day, when he confessed, implicating prisoner No. 2, who upon his arrest likewise confessed to having been a party to the dacoity. The remaining prisoners were subsequently captured. The prisoners were, with the exception of No. 2, recognized by the eye-witnesses at the commission of the dacoity and when leaving the house.

The prisoners Nos. 1 and 2, repeated the confession previously made to the police and before the deputy magistrate; at the trial, however, they repudiated it entirely, averring that the darogah had extorted it from them. The remaining prisoners all alleged that they were at their respective houses upon the night in question.

The charge is clearly proved by the confessions and evidence against the prisoners Nos. 1, 3, 4, 5 and 7, and against prisoner No. 2, by the confessions of No. 1, and his own voluntary admission, both before the police and the deputy magistrate. I convict the prisoners Nos. 1, 2, 4, 5 and 7 of the first charge, and No. 3 of both counts in the calendar, and I sentence them all to seven years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) Having examined the proceedings of commitment and trial, I find the reasons assigned by the sessions judge for conviction to be substantiated; I therefore reject the appeal and confirm the sentence.

PRESENT:

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND ASHUCK MAHOMED,

versus

BHOOTEE BADEA.

Rungpore.

1854.

April 29.

Case of
BHOOTEE
BADEA.

CRIME CHARGED.—1st count, having committed dacoity in the house of Ashuck Mahomed, the prosecutor, and plundered property value Rs. 278; 2nd count, taking and having in possession property acquired by the above dacoity, knowing it to have been so acquired.

CRIME ESTABLISHED.—Committing dacoity and plundering property, value Rs. 278.

Committing Officer.—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. William Bell, sessions judge of Rungpore, on the 8th February, 1854.

Remarks by the sessions judge.—This was a simple case of dacoity, occurring in the jurisdiction of thannah Foorunbaree, on the 5th of October last; eight of the dacoits were brought to trial on the 30th of December, 1853, and 2nd January, 1854, found guilty and sentence passed on them.

The remarks are these.

“This was a simple case of dacoity occurring in the jurisdiction of thannah Foorunbaree, on the 5th of October, 1853. The prosecutor’s house was attacked and *looted*, and property to the amount of 278 rupees carried off, but neither he nor the neighbours were able to recognize any of the dacoits, of whom there were some forty men, the prosecutor says. In consequence of suspicions resting upon the prisoners, they were arrested and Nos. 19, 20, 21, 22, 23, 24 and 25, confessed before the darogah and again before the magistrate with the exception of Nos. 19 and 22. Three pieces of property (a silver *kunslee*, four gold rings and a lock,) were found in the house of No. 26, (a *budmash*) who declared Pooshnath had given him the two ornaments and that the lock was his.

“Before the sessions court, the neighbours prove several of the prisoners to have been absent from their homes, under pretext of going to the *haut*, and their confessions are established by the witnesses who declare them to have been free and voluntary. They all deny and declare they were ill used, but only bring witnesses to their previous good characters. Seeing no reason to doubt the confessions made, I hold Nos. 19, 20, 21, 22, 23, 24 and 25, guilty on the 1st count.

1854.

April 29.

Case of
BHOOTEE
BADEA.

"Gunga Haree pleads *not guilty* and says the property was not found in his house, a fact established by witnesses, (Nos. 28, 29, 30, 31 and 32,) he brings three witnesses to prove his respectability they are all his relations and the witnesses (Nos. 31, 32, 46 and 47,) for the prosecution prove him a suspicious character. I therefore convict him on the second count."

"I tried the case alone under Act XXIV. of 1843.

It is shown that the prosecutor's house was attacked and looted by some forty men who carried off property to the value of Rs. 278; in searching the house of No. 6, the darogah found the property (gold and silver ornaments valued at Rs. 33-7,) buried close to the house of Bhootee Badea (No. 6,) which is proved to be the property of the prosecutor. Some few days after Pooshnath was arrested by the Naib Nazir in the sudder station, Bhootee Badea confessed before the darogah and Pooshnath denied before the magistrate.

Before the sessions the finding of the property and its belonging to the prosecutor are established, and the confession of Bhootee Badea is proved to have been free and voluntary. He denies and says his witness (No. 19,) wants to get rid of him as he is sick, and therefore has trumped up the story against him, he knows nothing of the property. His witnesses know nothing in his favor and seeing no reason to doubt the evidence for the prosecution, I consider him guilty and sentence accordingly. I tried the case alone under Act XXIV. of 1843.

Sentence passed by the lower court.—Imprisonment with labor and irons for ten (10) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoner, though confessing in the mofussil by the darogah's report, denied having done so before the magistrate and says he knows nothing of the property alleged to have been found concealed near his house. He describes himself in his defence as a cripple, having neither hands nor feet.

On referring to the darogah's report, I observe that the property was found concealed in a ditch or trench in an open place, some few *hauks* distant from the prisoner's house. The report does not say what led to this discovery, but the chowkeedar, before the sessions, states the prisoner's woman gave the information. As the discovery of property on a spot so easy of access cannot alone be deemed sufficient for conviction, I must acquit the prisoner and direct his release.

PRESENT :

A. DICK, Esq., *Judge*.

SADHOO AURUT AND GOVERNMENT,

versus

SUNKUR HALDAR.

Moorsheda-
bad.

CRIME CHARGED.—Wounding the prosecutrix with intent to kill her.

1854.

CRIME ESTABLISHED.—Wounding the prosecutrix with intent to kill her.

April 29.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Case of
SUNKUR HAL-
DAR.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 17th January, 1854.

Prisoner con-
victed of
wounding with
intent to mur-
der; sentenced
by the sessions
judge to four-
teen years' im-
prisonment.
In appeal the
sentence was
reduced to 7
years.

Remarks by the sessions judge.—There are no eye-witnesses in the case, but from the confession of the prisoner at the thanah and before the magistrate, as also from his defence before this court, there are no grounds for doubting that he is guilty of the offence with which he stands charged in the calendar. The witnesses to the *sooruthal* and the circumstantial witnesses stated in the evidence, that they saw the prosecutrix lying, severely wounded, on the ground and that the prisoner was standing near her, but soon after fled away from the spot.

The real motive of the act remains concealed. The prosecutrix though frequently questioned would not disclose it. All that appears is that they had quarrelled the day previous to the occurrence. From the nature of the wound and the circumstances of the case, I see no reason to doubt that his intention was to take her life; and he has, by wounding with such intent, rendered himself liable to be punished under Regulation 12, of 1829.

The law officer who sat on the trial declared the prisoner guilty, upon full legal proof, of having wounded the prosecutrix with intent to kill her; concurring with him in the above opinion, I sentenced the prisoner as stated in the proper column.

Sentence passed by the lower court.—To be imprisoned for 14 years with hard labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. Dick.) The act, in this case, proved against the prisoner, was, as stated in his confessions, that of a moment in the heat of passion. There is not a tittle “manifesting a deliberate intention to commit murder,” to use the words of Regulation 12, of 1829.

The Court, therefore, convict the prisoner of wounding, and with reference to the severity of the wound, the instrument with which it was inflicted, and the slight alleged provocation, as set forth in his confessions, sentence him to seven years' imprisonment with labor in irons.

PRESENT :

A. DICK, Esq., *Judge.*

ILARROO SHEIKH ON THE PART OF GOURMONEE DEBYA AND GOVERNMENT,

versus

MEENA SHEIKH (No. 1,) ITWAREE SHEIKH (No. 2,) KULLUM MUNDLE (No. 3,) AND JUREEF SIRDAR (No. 4.)

Rungpore.

1854.

April 29.

Case of
MEENASHEIKH and
others.Conviction of
burglary and
sentence of
seven years'
imprisonment,
passed by the
sessions judge,
upheld in ap-
peal.

CRIME CHARGED.—1st count, committing burglary with assault on Gourmonee Debya and theft of property to the value of Rs. 582-13; 2nd count, accessoryship before and after the fact; 3rd count, knowingly receiving the stolen property; 4th count, privity.

CRIME ESTABLISHED.—Nos. 1 and 2, burglary with assault and theft of property to the value of Rs. 582-13; No. 3, accessoryship before and after the fact, and No. 4, knowingly receiving the stolen property.

Committing Officer.—Mr. S. F. Davis, joint-magistrate of Serajunge.

Tried before Mr. William Bell, sessions judge of Rungpore, on the 7th January, 1854.

Remarks by the sessions judge.—It is shown from the statement of the prosecutor and witnesses that the house of Gourmonee Debya, in the jurisdiction of thannah Ryegunge in Serajunge, was broken into, she herself bound hand and foot, and property valued at Rs. 582-13, taken away. The prisoners No. 1, Meenah Sheikh and No. 2, Itwaree Sheikh confessed to the burglary, both before the darogah and magistrate, and No. 3, Kullum, confessed before the darogah and magistrate to being an accessory; twenty pieces of property consisting of silver and gold ornaments, &c. were discovered near the houses of the different persons and recognized as Gourmonee's stolen property. Before the sessions all pleaded *not guilty*, deny their confessions, and produce witnesses, but not a single item of evidence in their favor is elicited, and I see not the slightest reason to doubt their confessions, backed as they are by the property produced by them or found by others.

The law officer convicts all, and I agree.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for 7 years.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The three prisoners, petitioners, all confessed before the magistrate, and at the sessions could make no credible defence.

The Court see no reason for interference.

PRESENT :

J. DUNBAR, Esq., *Judge.*

GOVERNMENT,

versus

OOMERTO NARAIN BISWAS (No. 1,) BUNGO CHUNDERDASS GOILAH (No. 2,) ABBAS, SON OF OJAJEE (No. 3,) KALLACHAND DUTT CHOWDRY (No 4,) AND UBBAS (No. 5.)

Backergunge.

1854.

CRIME CHARGED.—1st count, wilful murder of Bechoo ; 2nd count, affray attended with the culpable homicide of Bechoo.

Committing Officer.—Mr. E. F. Harrison, officiating magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 18th March, 1854.

Remarks by the sessions judge.—The cause of this affray would seem to be, that a dispute existed between No. 1, Oomerto Narain, and No. 4, Kallachand, regarding a talook in Puloordee village called Gunnaish Sham Dass. The former, either for himself or his wife Umbica, and her relatives, holds a share of that talook, and Kallachand holds a farm of that share. This connection between the parties is now denied, but whatever they may now say, it is plain that there was, when this case occurred, a difference between the parties on the subject of the rents of the talook ; which side proceeded out first to make the collections, is doubtful, but it is certain that on the morning of the 3rd January, the sides met in equal force on the banks of a tank in the village, the one to make collections, the other to prevent them. Each party had from 15 to 20 followers, armed with clubs and spears, &c. After some words of abuse from either side, blows commenced, and Bechoo on the side of Kallachand, prisoner No. 4, having been early disabled by spear wounds in the abdomen and other parts, the rioters on the side of Oomerto, got frightened, and fled from the field. On this Kallachand's side carried Bechoo, either to his own house or the adjoining one of his relative, Kalli Kaunt, where the wounded man very soon after expired.

Kyamuddeen, a chowkeedar, as soon as he saw that a fight was probable, started for the thannah. The jemadar arrived soon after the affray was over, and seized the prisoners Nos. 1, 2, 4 and 5, the same day. He found the body of Bechoo in the house of Kalli Kaunt, in the keeping of the prisoner No. 5.

The body was examined by the witness No. 11, medical officer, who was of opinion that the cause of death was the infliction of a spear wound in the abdomen.

April 29.

Case of
OOMERTO
NARAIN BIS-
WAS and
others.

Prisoners
charged with
wilful murder
and other
counts, con-
victed of cul-
pable homicide
and sentenced
to seven years'
imprisonment.

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Case of
OOMERTO
NARAIN BIS-
was and
others.

Eight witnesses, of whom three were village chowkeedars, were eye-witnesses to the fight; of these, six* were examined at the sessions and their evidence corroborates the abstract which has been briefly given above,

of the origin and particulars of the fight. A bundle of spears and javelins were found in Kallachand's house.

The defence of prisoner No. 1, Oomerto, at the thannah was, that he was at the time in the house of one Budden Kundu, two *dands* off from the scene of the affray; that while there, he heard that there had been a fight between the adherents of Anno Poorna (his own wife's mother) and Kallachand, and that a man had been killed.

Before the magistrate, and before the sessions, his defence was that his wife's aunt Soomittra had obtained a decree against Kalli Kaunt, and that she had become the purchaser at auction of his talooks; that between Kallachand and Kalli Kaunt ill feeling existed, and that in order to gratify his spite, he, Kalli Kaunt, had caused some wounds to be made on the body of his servant Bechoo, after his death from cholera, and had trumped up a story of a fight having taken place between him, the prisoner and Kallachand, in which Bechoo is said falsely to have been killed. He further pleads an *alibi*.

Bung Chunder No. 2, also pleaded at the thannah, that he was two *dands* off at the time of the fight, heard of it, and came home where he was immediately seized by the police jemadar.

Before the magistrate and before the sessions he adopted the same defence as that put forward by Oomerto No. 1.

The prisoner Abbas, son of Oojae No. 3, pleaded from the beginning an *alibi* and disavowed all connection with the parties and with their quarrel.

The defence of Kallachand No. 4, at the thannah was, that Umbica, daughter of Anno Poorna and wife of Oomerto, prisoner No. 1, owns a 1a. 6e. 2g. 2k. of talook Gunnaish Sham Dass, in mouzah Puloordee; that share was given last year in firm to Kalli Kaunt, the prisoner's cousin. Bechoo, the deceased and Ubbas prisoner No. 5, were appointed to collect the rents of the farm; that that day, at about four *ghurrees*, they started off to make collections, and had laid hands on a ryot, by name Chunder Kaunt from whom they demanded rent, when the prisoners Oomerto and Bung, with several other persons, came up and resisted them; that abuse was first exchanged and then, on the banks of the tank, a fight took place, in which, as the prisoner heard, Bechoo was killed; the prisoner denies that he has anything to do with the farm, and he affirms that he took no part in the fight, having been at his own house while it was going on.

In the foudjary and before the sessions, he denied that there had been a fight, and averred that Bechoo had died in Kallee Kaunt's house of cholera, and that the case had been trumped up against him by this person.

Ubbas the prisoner No. 5, whom the jemadar found with the body of Bechoo, made a full confession to that officer. He represented that there had been a fight between Oomerto and others on his side, and Kallachand and others on his side, that he was engaged in it, and that Bechoo was killed by a *soolffee* thrown by Busseeroodin; that after the fight Bechoo was carried off the field by him and two others to Kallachand's brother's house, where he was found dead by the police.

Abbas made the same confession before the magistrate. He states that Bechoo was first taken to Kallachand's own house, and afterwards conveyed from that to Kallee Kaunt's.

At the sessions his defence is, that he went to Paloordee to see a friend, there he heard that his relative Bechoo was ill of cholera, went to see him at Kallee Kaunt's house, where the jemadar seized him.

I may remark that the prisoners Nos. 1, 2 and 4, appear to have been forwarded together from the mofussil, and to have arrived at the same time at the station; that they were together on the way (a journey of some days) is probable, and it will therefore not appear strange that they thought it to the advantage of all to appear united, and adopt a common story, whereby they might succeed in making a scapegoat of Kallee Kaunt, and so secure their own escape.

Witnesses were examined in favor of prisoners Nos. 1, 2 and 4, but their testimony is deserving of no credit and is but little to the point.

The *futwa* of the law officer convicts the prisoners of affray, attended with the culpable homicide of Bechoo, and declares them liable to discretionary punishment by "*Tazeer*."

I consider them guilty of a crime of a higher degree. Both parties went armed and in force. The weapons they had with them could not be used offensively, except with the almost certain risk of causing death. That murderous weapons were taken to be used if occasion required, that they were used, and that murder ensued, stamp the affair as one in which the parties, if guilty of any thing, are guilty of wilful murder. I would convict the prisoners of being accomplices in the wilful murder of Bechoo and sentence them, each and all, to imprisonment for life in transportation.

The severest examples are indispensable in this district to break the neck of that lawless habit, which is so peculiarly the characteristic of this people. However slight the ground of contention may be, out the parties sally with spears and javalins and a conflict hardly ever takes place in which a murder or two

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does not occur. No one thinks of commencing an altercation with any thing less than several spears and javelins, and the records of the court bear testimony to the number of lives which are yearly sacrificed to the propensity, so universally prevalent in this district, to resort to violence on the slightest occasion.

If life sentences are generally known to be the certain punishment of those who commit a premeditated affray with formidable weapons, attended with loss of life, the people may gradually drop the custom of assembling their adherents with spears and javelins on every trivial disagreement.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.) Government versus No. 1, Oomerto Narain Biswas, No. 2, Bungo Chunder Dass, No. 3, Abbas, No. 4, Kallachand Dutt, No. 5, Abbas 2nd.

Baboo Kishen Sukka Mookerjee appears for prisoner No. 1, Mr. Waller for No. 2, Mr. Norris for No. 4. Baboo Sumbhoonath Pundit for Government.

1. *Baboo Kishen Sukka* argued, that there is some discrepancy in the evidence at the different stages of the case, as affecting prisoner, No. 1, of which he should have had the advantage, and further that as it was proved that one Busseerooddeen had speared the deceased, his client could, under no circumstances, be convicted of the murder, even if such a finding were right, which he denied.

2. *Mr. Waller and Mr. Norris* drew attention to the absence of probability as against their clients, respectively, on the ground that there is nothing in the evidence, or on the record of a nature to prove that they had any positive interest in the matter, regarding which this affray is said to have been got up. A few comments were also made by them on the evidence, and they both contended that the case is only one of culpable homicide.

3. *Baboo Sumbhoonath Pundit* remarked that the evidence was so clear, and generally consistent, that there could be no doubt, as to the fact of all the prisoners having been concerned in the affray ; that the connection of the parties with the matter in dispute was sufficiently shown, and that even if it had not been possible to show this, that circumstance could not be allowed to shake the positive and uncontradicted evidence of so many witnesses ; he contended, that although the prisoners may not have gone out with any intention to take the life of any person, still as they went out armed with weapons, likely, if brought into use, to cause death, they are legally responsible for the guilt of murder.

The inquiry in this case, followed so close on the commission of the act, with which the prisoners are charged, that the evidence, corresponding so entirely as it does, in all the main particulars with the confession of the prisoner, Abbas, No. 5, may

be received with more than ordinary confidence. I concur with the sessions judge and the law officer in thinking it entirely satisfactory. I differ with the former, however, as to his finding. There is no evidence to show that there was any premeditated purpose of killing Bechoo, or indeed of killing any person at all. A vast number of similar cases have been disposed of in times past by this Court, and unless there was evidence to show premeditation to murder, the finding has always been one of culpable homicide. Convicting the prisoners of that crime, I sentence them all to seven years' imprisonment with labor in irons.

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Case of
OOMERTO
NABAIN BIS-
WAS & others.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT AND ANUND BEWA,

versus

KHEPOO KOOREE (No. 1,) ISHUR KOOREE (No. 2,) ISHUR KOOREE (2ND, No. 3,) BHOLA KOOREE (No. 4,) BISSONATH KOOREE (No. 5,) RAMJOY KOOREE (No. 6,) MOHUN CHOOTAR MISTRY (No. 7,) AND SURROOP KOOREE (No. 8.)

Rajshahye.

CRIME CHARGED.—Wilful murder of Takoor Shah Jollah. Committing Officer.—Mr. F. L. Beaufort, joint-magistrate of Pubna.

1854.

April 29.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 20th March, 1854.

Case of
KHEPOO Koo-
REES & others.

Remarks by the sessions judge.—The law officer in his *futwa* finds the offence to be murder, and of which I think there can be no doubt, and convicts all the prisoners except No. 7, of being accessories thereto, the reference is therefore unavoidable.

The deceased who was a Mussalman, it would appear had a *liason* with the witness No. 1, who is a widow and Hindoo of *chootar* or carpenter caste. This had gone on for about two years, and on the night of the occurrence the deceased was actually sleeping in her house, when the prisoners and others came and seized him and carried him off. Witness No. 1, followed them a short way, and then sent information of what had happened to the deceased's mother, and next morning early his corpse was found in a *mât*, or plain of an adjoining village, with marks of violence, and shockingly mutilated, one eye being scooped out, one ear cut off, and the testes mangled and partly cut off.

Six prisoners convicted as accomplices in wilful murder, sentenced to transportation for life. A seventh prisoner, sentenced, on account of his youth, to ten years' imprisonment.

Besides the woman "*Omrith*," with whom he had been sleeping, six witnesses saw the deceased carried off by the prisoners

1854. Nos. 1, 2, 3, 4, 5, 6 and 8; of these witnesses No. 3, was the mother of the widow and Nos. 6 and 7, her father and uncle, April 29. and with the exception of witness No. 2, all were her relatives.

Case of The prisoners plead *not guilty*, but No. 1, admitted both his KHEPOO KOO- mofussil and foudjary confessions. In these he confessed to REE & others. being present when the deceased was carried off from the house of Omrith Bewa, and also that he was present when he was killed and his body left in the *mât*.

Nos. 2 and 3, before the joint-magistrate made similar confessions, and these were proved to have been voluntary, their mofussil confessions they denied making, and as the witnesses whose names were subscribed to them could neither read nor write, they were not examined, as they could not attest the confessions.

No. 4, before the police and joint-magistrate, confessed to being present when the deceased was carried off, but that he did not see him killed, nor did he accompany the others who took him to the *mât*.

No. 5, both in the mofussil and foudjary, confessed that he was present when the deceased was carried off, and also when he was killed in the *mât*, but that he did not strike him.

No. 6, made similar confessions, but with the difference that he *did* strike the deceased. All these confessions were proved to have been voluntarily made.

The motive for the murder is not so clear. Some of the prisoners implicate the father and uncle of the woman Omrith, as having instigated its commission on account of the injury done to their caste by the deceased's intrigue with the daughter of the former. No. 3, had himself an intrigue with the widow before this, her mother admits. Between No. 6, and the deceased there was an old grudge, and a recent dispute, relating to an ear-ring lost by the widow in the house of No. 6. and found by his wife, who would not return it. The widow on this took an ornament, called a *tabeez*, belonging to one of the children of No. 6; a complaint was then lodged at the jemadar's cutcherry, and Omrith was summoned, but evaded and eventually on the payment of one rupee, she got off, and this seems to have settled the prisoner. He also on a former occasion complained to witness No. 25, that the deceased had beat him, and the whole evidence indicates that he was one of the principals in the commission of the outrage.

According to witness No. 3, the mother of Omrith No. 8, pimped for the deceased, and procured her daughter for him, and when questioned by the prisoner, she was much excited in giving her evidence.

The testimony of the witnesses to the *sooruthal*, or inquest on the body, agree in the main facts with the evidence of the sub-assistant surgeon. Only the former deposed that the *testes* though cut, were attached to the corpse. Mr. Ellis deposed they

had been cut clean off. All agree that the appearances of mutilation could not have been caused by jackals or other animals, or crows and birds getting at the body before it was discovered.

Concurring with the law officer that a foul murder has been committed and that Nos. 1, 2, 3, 5 and 6, both on the evidence and their own confessions, were accessaries before the fact, and instead of privy to murder, that they were present, aiding and abetting in the crime, I beg to propose, should the Court concur in their conviction, that they be sentenced, except No. 5, to fourteen years' imprisonment with labor and irons. No. 5, on account of his age, I suggest be sentenced to only seven years' imprisonment, and if he lives so long, before the expiration of the sentence, he will become an incumbrance to the jail. Nos. 4 and 8, the *futwa* only convicts of being accessaries before the fact, and the evidence, as well as confessions of No. 4, establish nothing more. Should the Court concur in their conviction, I would propose that they be sentenced to seven years' imprisonment with labor and irons. The extreme youth of No. 4, who certainly does not look more than seventeen years of age, may be taken into consideration, and it is *possible* that he was not aware to what length the others would proceed with their victim.

Only the widow named No. 7, and therefore her statement was unsupported as to his being present when the deceased was carried off, and I have, concurring in the *futwa* as regards him, directed his release.

He also seems to have had an intrigue before, with the widow, and is the only person of her *own* caste implicated in the transaction. What there was in her to attract so many admirers, I am quite at a loss to imagine. She is very plain, if not ill-looking, and by no means young.

The deceased had a family by his wife and left three children. He seems to have been a strong and powerful man, and no doubt it required a good number to overcome him, and hence the conspiracy to murder him, quite in keeping with the Bengali character. As the woman never complained of him, (as deposed to by her) the prisoners had no right to question her intimacy with the deceased, and all being of a different *caste* they could not complain of any injury done to themselves or to *their caste*, from the notoriety of the *liason* between her and the deceased.

With this opinion, I leave the case in the hands of the Court. All the prisoners, except No. 7, released, are in jail.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The evidence in this case is of two kinds, that of the eye-witnesses, who depose to having seen the murderous assault, and that furnished by the confessions. The former applies to all the prisoners, except Bissonath Kooree No. 5, the latter to all except Surroop Kooree No. 8. The evi-

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dence, of the witnesses, and the confessions correspond so entirely as to the time; place and nature of the assault that there can be no doubt as to the proof of the fact charged.

There would not appear to be any shade of difference which can be legally recognized, in the guilt of all the prisoners charged. What is wanting against prisoner No. 5, in the direct evidence, is made up by his own confession, in which he admits, that he helped to carry the body away, and the absence of any confession on the part of prisoner No. 8, cannot avail him, as the testimony of the witnesses is corroborated by the confessions, in every one of which it is alleged that No. 8, was of the party.

The witnesses speak only to the assault, the confessions go further and some of them detail what occurred previous to the assault, and what after the body had been carried away from the village. According to these, the assault was not made for the purpose of taking life, but only with a view to inflict correctional punishment, and the mutilation of the body was the handywork of the witnesses Nos. 6 and 7, Teelok and Cashenath.

There are certainly strong grounds for suspecting that the death of the deceased was not effected without the consent, and probably even the participation, of these men. The one is the father, and the other the uncle of the Hindoo woman who had brought disgrace upon her family, by her connection with a Mahomedan, a strong and powerful man, whom they dared not attack till they had enlisted the services of others, to whom he had also given offence on other grounds; only in this view is it possible to account for the fact, that these men and several others witnessed the assault and the carrying away of the body, without taking any steps to prevent them, we cannot, however, admit the plea urged by the prisoners, as to the absence of any intention to murder as sufficient to bar conviction of that crime. They may possibly have thought beforehand, that they would only inflict a sound thrashing, but it is clear, both from the direct evidence, and from the confessions of all, save Bhola Kooree No. 4, that the assault was continued in the most unrelenting manner till the man became utterly insensible and that in that state, he was carried out of the village and finally despatched.

We convict the whole of the prisoners as accomplices in the murder, and sentence Nos. 1, 2, 3, 5, 6 and 8 to imprisonment for life in transportation. Adverting to the sessions judge's remarks as to the extreme youth of No. 4, and the probability that a lad of his years was led into crime, by his older associates in this case, we sentence him to imprisonment for ten years with labor and irons.

PRESENT:

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

KALIPROSHAUD DAN, RAMDHON DUTT, AND GOVERNMENT,

versus

ISHUR BAGDY (No. 1,) GOPAL HAREE (No. 2,) MO-
DHOOSOODUN ALIAS MUDEE DOOLIA (No. 3,) NO-
KOOR MOOCHEE (No. 4,) AND SUDA ALIAS SUDDE-
RUDEE FUQUEER (No. 5.)

Hooghly.

CRIME CHARGED.—Dacoity attended with the murder of
Sunyasee Bagdy, in the house of the prosecutors Kaliproshaud
Dan and Ramdhon Dutt, on the night of the 8th March, 1854,
and wounding Chundra and Titu chowkeedars, and plundering
therefrom property to the value of rupees 106-1-0, viz., silver
ornaments 43, brass utensils 29 and cloth 34-1-0.

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May 2.
Case of

ISHUR BAGDY
and others.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions
judge of Hooghly, on the 18th April, 1854.

Prisoners ac-
quitted, the
evidence

Remarks by the officiating additional sessions judge.—The
two joint prosecutors, with the government, live in one enclou-
sure and both their houses were attacked on the same night by
the same gang. They can give no account of the affair, and
seem to have effected their escape from the premises, as soon as
they found them invaded by the robbers. One of them states
that he was seized in the act of running off and branded with a
lighted torch.

against them
being recogni-
tion only, and
not trustwor-
thy of itself,
nor corrobor-
ated. Confes-
sions rejected
being to all ap-
pearance ficti-
tious, and not
admitting wil-
ful participa-
tion in the
crime. Held
that a *futwa* is
unnecessary in
trials on charg-
es of dacoity
accompanied
with murder.

The prisoners plead *not guilty*.

The particulars of the dacoity are thus described by the al-
leged eye-witnesses,* who are Chow-
keedars of the village in which the
affair occurred. They state that they were smoking together
about 2 o'clock in the morning, at the house of the prosecutor
Kaliproshaud Dan with one Sunyasee Bagdy, his servant, when
a body of ten or twelve persons armed with bamboo spears
entered the enclosure. They rose up simultaneously and the
dacoits finding themselves unexpectedly confronted fell back.
They rallied again immediately with a reinforcement, when a
conflict ensued between them and the chowkeedars, in which the
said Sunyasee Bagdy was killed on the spot and two of the lat-
ter wounded (the witnesses Chundra No. 1, and Titu No. 2.)
It is alleged by one of these deponents that the prisoner Ishur
Bagdy, No. 1, dealt the fatal blow and one of the wounds, and

1854. by all that he and the other prisoners were present at the encounter. This is all the proof against the prisoners.

May 2. I did not examine witness No. 4 of the calendar, Jodunath

Case of Dan, because he declared himself ignorant of the nature and
 Ishur Bagdy obligations of an oath. He appeared to be about twelve years
 and others. old and not particularly intelligent.

It appears that the prisoner Ishur Bagdy was taken in the
 * Witnesses Nos. 5, 7, house of a relative of his employer,
 and 8. and the fact is established by the wit-

nesses indicated in the margin,* who fail to prove before this
 court that he sacrificed a kid to the shrine of the goddess Sito-
 la a day or two before the dacoity, a circumstance urged against
 him.

The evidence of the civil surgeon† goes to show, that the
 death of Sunyasee Bagdy was caused
 † Witness No. 15. by the rupture of the femoral vein

and the hæmorrhage consequent thereon.

Surno Harini‡ appears to have stated before the magistrate

‡ Witness No. 25. that her husband, the prisoner Gopal
 Haree No. 2, was called away from

his house by the prisoner Ishur Bagdy, No. 1, on the morning
 of the day on which the dacoity occurred; but she gives a very
 confused and contradictory account of the affair before this court,
 and fixes its date after the commission of the dacoity.

Another woman,§ the mistress of the prisoner Modhoosoodun
 alias Mudée Doolia No. 3, of the calen-

§ Witness No. 26. dar, unable to be put on his trial
 owing to severe indisposition, deposes that her keeper was also
 taken away by the prisoner Gopal Haree, but she omits dates
 and fails to fix the time.

The pharidar of the adjoining police station, the witness in-

|| Witness No. 27. dicated in the margin,|| was the per-
 son who first made a report of the
 dacoity to the darogah. He states that after despatching the

report, which contains no names of persons recognized during
 the dacoity, he repaired to the prosecutor's village and there
 learned that the prisoners had been identified, and that he pass-
 ed on the intelligence to the darogah. The recognition, he states,
 was a general one, and not specific as regards the prisoner Ishur,
 namely, that he wounded Sunyasee Bagdy, to the death
 with a spear and struck the witness Titu with the same wea-
 pon.

The witness noted in the margin,¶ is a neighbouring chow-
 keedar, and went to the prosecutor's

¶ Witness No. 28. house after the departure of the da-
 coits. He saw the killed and wounded parties but heard nothing
 of the recognition of any of the offenders, though he sought the
 information. He adds that the chowkeedars told him the next

morning that they had identified six persons, but declined to mention names. This deponent does not corroborate the statement set forth in the abstract of the examination and grounds of commitment in the calendar, viz., that he heard the deceased say in *articulo mortis* that the prisoner Ishur had dealt him the fatal blow. He denies the fact.

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Case of
ISHUR BAGDY
and others.

The confession of the prisoner Gopal Haree, No. 2, both before the police and the magistrate will be proved by the witnesses marginally* noticed. These confessions are consistent with each other in all essential points. The only feature worthy of remark is, that in both, the prisoner asserts that he was under the influence of wine when he joined and took part in the expedition.

* Witnesses Nos. 18, 19, 23 and 24.

The prisoners plead *alibi* before this court and call witnesses in proof, some of whom support the defence.

The *futwa* of the law officer acquits all the prisoners of wilful murder, but convicts the prisoner Ishur Bagdy, No. 1, of culpable homicide, liable to *decut*, and declares the rest entitled to their release. This *futwa* has no reference of course to the charge of dacoity.

I cannot concur in this finding as respects the prisoner Ishur Bagdy No. 1; if he is guilty at all, he is guilty of murder, as the evidence which is taken to criminate him goes directly to show that he inflicted the fatal blow under circumstances which leave no doubt of his intent to do grievous bodily harm. In reviewing the evidence against him I find it to consist entirely of recognition; but when I consider that he was not named on the night of the occurrence, but the following day on the arrival of the police officer, Derasutulah, and then only in general terms as one present at the outrage, and that no mention of him, as the inflicter of the fatal wound, was made until the darogah came and commenced the investigation, that evidence loses much of its power and weight. It is impossible to believe that he was seen taking the conspicuous part he is represented, and the circumstances have remained a secret for a night and a day. The testimony again is of chowkeedars only, parties interested in the arrest and charge of some one, to secure their own freedom from punishment for neglect of duty. It is strange also that so many of these officers should have been assembled in a particular spot at such an hour (2 A. M.), of a dark night, when they were especially required to be on their respective beats. And it is almost incredible that a gang of armed dacoits, bent on violence and plunder, should have recoiled at the sight of three or four persons who offered them no opposition. Independent of these considerations, the evidence is weakened by discrepancies and contradictions as given before the magistrate and this court. Under these circumstances, I am not satisfied

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Case of
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and others.

with the evidence against Ishur Bagdy, prisoner No. 1, and would recommend his release. The above remarks as respects the recognition are applicable to the case of the prisoners Nokoor Moochee No. 4, and Suda, alias Sudderuddee Fugueer, No. 5, in whose acquittal I concur, though on different grounds from those recorded in the verdict. I am constrained to convict the prisoner Gopal Haree, No. 2, of being an accomplice in a dacoity attended with murder and wounding, because he confessed crime both before the police and the magistrate, and recommend that he be sentenced to transportation for life, there being no reason to believe that he was immediately concerned in the murder.

The trial as respects the prisoner Modhoosoodun, alias Mudee Doolia will be resumed, as soon as that individual is reported convalescent and in a fit state.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.)

Mr. A. Dick.—The case is referred to this Court with respect to two prisoners only. Prisoner No. 1, Ishur Bagdy, and prisoner No. 2, Gopal Haree. The evidence against prisoner No. 1, consists solely of recognition at the dacoity and mortally wounding the deceased, also wounding one of the chowkedars, Titu, witness No. 2; three of the witnesses depose to having recognized him, Chundra, Titu, and Jadoo; Jadoo has contradicted himself so thoroughly, and told such deficient tales to the magistrate and to the sessions judge, that his evidence is not worth a moment's credit. Had Chundra and Titu deposed solely to the recognition of the one or two dacoits, who wounded them and the deceased, their evidence might have been trustworthy, although they did not divulge the names of those recognized, until the police arrived, but when they swear to having recognized half a dozen in such a rush, as that of the dacoits, they themselves being wounded and knocked down at once, no trust can be placed on their testimony, I concur therefore with the sessions judge in rejecting it and acquitting the prisoner, No. 1. The confessions of the prisoner, No. 2, Gopal, must be taken in full, or not at all. He states that when he first overheard some of the dacoits talking of committing a dacoity, he told the village chowkedar. A week after, he was returning from work, he fell in with the dacoits, assembled, and by them was forced to accompany them and he ran away the moment he could, when they commenced their attack. If his confessions be true, he was not at all concerned. He did not belong to the gang, he was forced to accompany them, and he ran off without taking any part, immediately he could escape. The confessions however seem to be fictitious, I would reject them, and release the prisoner Gopal, likewise. I must observe, that the *futwa* is a most extraordinary one, and no reasons given for it. As the charge

was dacoity with murder, the sessions judge need not have called for a *futwa*.

Mr. B. J. Colvin.—This reference relates to the prisoners, Nos. 1 and 2. The only evidence against the former is recognition by three witnesses, viz. the two wounded chowkeedars, witnesses Nos. 1 and 2, and witness No. 3.

Their evidence, although not contradicted by other evidence, is entirely unsupported by any thing in corroboration of it, and it therefore cannot be depended upon so as to warrant the conviction of the prisoner. The hesitation on the part of the witnesses, to declare whom they had recognized, has the appearance of collusion, as if they had arranged to concoct proofs against some one. Moreover a circumstance on which the magistrate has much relied in making the commitment, that the deceased had said to witness No. 28, that Ishur had struck him the blow from which he afterwards died, is not borne out by that person's evidence in the magistrate's and sessions judge's courts, where he distinctly deposed that the deceased was dead when he, viz. the witness, reached the premises.

Against Gopal, No. 2, there is recognition by the same witnesses, but their evidence is, as above said, not sufficiently trustworthy for conviction. There are also his confessions before the magistrate and darogah, which I am disposed, from their tenor, to consider fictitious; besides that, the former does not acknowledge that he was a consenting party to the dacoity. He says in it that he was forced to accompany the band, that he did not engage in the dacoity and took the first opportunity to escape from the scene.

I concur in the acquittal of both the above prisoners.

The sessions judge need not have tried this case with a law officer. He seems to have done so on account of murder forming a part of the charge, but when murder is embraced in the charge of dacoity and as an aggravation of it, it is not necessary that a law officer should sit on the trial. Had there been a separate charge of murder, a *futwa* would have been requisite.

I concur in the opinion of the impropriety of the *futwa*. If the prisoner, No. 1, was guilty of any thing, he was guilty of wilful murder.

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MAY 2.

Case of
ISHUR BAGDY
and others.

PRESENT :

A. DICK, Esq., *Judge and*B. J. COLVIN, Esq., *Officiating Judge.*West Burd-
wan.

GOVERNMENT,

*versus*1854. SREEKANT DUTT PODAR (No. 4.) GOOROO CHURN
GHOSE (No. 5.) AND SREEMUNT GHOSE (No. 6.)

May 2.

Case of
SREEKANT
DUTT PODAR
and others.Conviction
and sentence
affirmed by re-
jection of ap-
peal.

CRIME CHARGED.—1st count, committing a burglary in the shop of the prosecutor Goshain Doss Dey Tantee, on the night of the 12th December, 1853, corresponding with 28th Aghun 1260, B. S., and stealing therefrom cloth to the value of Rs. 240-4-6; 2nd count, knowingly receiving and having in their possession property acquired in the said burglary.

CRIME ESTABLISHED.—Committing a burglary in the shop of the prosecutor Goshain Doss Dey Tantee and stealing therefrom cloth to the value of Rs. 240-4-6.

Committing Officer.—Mr. F. Tucker, joint-magistrate of Bancoorah.

Tried before Mr. Pierce Taylor, sessions judge of west Burdwan, on the 6th March, 1854.

Remarks by the sessions judge.—The shop of the prosecutor was entered (through the chopper) on the night of the 12th December, 1853, but the prisoners were not apprehended by witness No. 1, until the 18th idem. The desire of that individual to enhance his own merit in making the capture, led him to vary his accounts of the way in which it was effected, before the joint-magistrate and this court; but it was sufficiently clear that he had come up with the prisoners at a place called Shambazar, in the Gurbellah *illaqueh*, and been induced to seize and make them over to the pharidar, by the suspicious nature of their conversation, which he overheard. All three prisoners confessed in the mofussil. Sreekant, No. 4, would only acknowledge that he was accessory before and after the fact, but the other two, who affirmed that they were robbers of Calcutta, on a country tour, and that No. 4, had made the way for them, confessed the actual commission of the burglary and declared that Sreekant had participated therein; 101 cloths were taken on three *motteas*, who were with the prisoners when they were apprehended, and they stated that twenty-two, forming the share of No. 4, were in his house at Bancoorah, near which they were found by witness No. 10, Modhoo Bagdee Ghutwal, in the presence of the town darogah, Kartic Podar, witness No. 11, and others. The three *motteas* were released by the joint-magistrate, as it appeared that they were not aware of the nature of the property they

carried. A number of the cloths bore the shop mark of the prosecutor, and all were sufficiently identified by him and witnesses Nos. 14 and 15. In the foudjary court, only the prisoner No. 5, confessed, but the other two gave answers which, though palpably false, connected them with prisoner No. 5, and the property found upon the *motteas*, seized in their collective company. Before the sessions court all the prisoners pleaded not guilty. Nos. 4 and 6, repeating the answers which they had given before the joint-magistrate, as their defence, and No. 5, denying having received board and lodging from No. 4, and leaving it to the court to say, whether the confessions he had previously made were worthy of credit or not. No. 6, also declared that he had been induced to confess, in the mofussil, by forcible immersion in water inflicted upon him by the Sewanadar, witness No. 1, and the jemadar in charge of the Shambazar Fandee.

There were certain discrepancies, as to the name of the person in whose house the burglary had been committed, in the mofussil and foudjary confessions, but they were of no consequence, as prisoners Nos. 5 and 6, being strangers, led on by No. 4, who lived on the spot, most probably did not know the name of the person whose habitation they entered, and it was Sreekanth's object to create confusion, by purposely misstating the name. No other person but the prosecutor was robbed on the night of the burglary. Two *seend kattoes* and a knife, were found in the bundles seized at Shambazar, and there were an old *looe*, or blanket, a sack and a cloth found, with the separate portions of property which were not identified by the prosecutor and his witnesses. Four of the witnesses, named by prisoner No. 4, were examined without any result in his favor, No. 5 named none, and 3 to character for No. 6, were not present when called for.

The jury brought in a verdict of guilty, against all the prisoners, in which I concurred. I considered the evidence against prisoners Nos. 5 and 6, full and legal, and that against prisoner No. 4, tantamount to violent presumption and therefore convicted them all of the crime charged in the *first count*, and sentenced them to equal punishment as noted.

The Sewanadar, witness No. 1, deserved credit and reward for the wide-awake and cautious manner in which he apprehended the prisoners, with nearly the whole of the property, stolen from the prosecutor, in their possession.

Sentence passed by the lower court.—To be imprisoned for three (3) years each with labor in irons and (1) one year more in lieu of stripes, total (4) four years each in the zillah jail.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court, after having heard the petition of appeal and examined the record of the trial, see no

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and others.

1854. reason for interference with the sentence passed upon the prisoners.

May 2. The Court concur with the sessions judge in considering the
Case of conduct of Sewanadar praiseworthy, and direct that a reward of
SREEKANT twenty-five Company's Rupees be given to him.
DUTT PODAR
and others.

PRESENT:

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND OTHERS,

versus

Hazareebagh.

AJMEER.

1854. CRIME CHARGED.—Committing rape on the person of Musst. Goonda, prosecutrix.

May 2. Committing Officer.—Captain W. H. Oakes, principal assistant to the Governor-General's Agent at Lohardugga.

Case of Tried before Major J. Hannington, deputy commissioner of
AJMEER. Chota Nagpore, on the 13th April, 1854.

The prisoner was convicted and sentenced for rape. *Remarks by the deputy commissioner.*—The prosecutor states that at noon, on a Thursday, in Phalgun, his daughter, Goonda, had gone out with her grandmother to herd cattle, and in the evening was brought home in her grandmother's arms. Prosecutor asked what had happened, and his daughter then told him that the prisoner Ajmeer, had taken her to the jungle and had forcibly violated her. Prosecutor then saw blood on and issuing from the child's person. Information of the fact was immediately sent to the police. Prosecutor has no quarrel with the prisoner. The prosecutor's cousin has had the prisoner's sister in keeping for four years past.

Goonda, a child of about six years old, has no notion of the nature of an oath, her statement recorded "*quantum valet.*"

She speaks the truth, the prisoner carried her away and deflowered her, his act made her bleed, she cried. He threw her down and went away. She showed her condition to the old woman (her grandmother), whom she met on the way. Ajmeer took her away to look for wild figs. There is a fig-tree at the place. He did not ask her consent to the act. He did it by force.

The prisoner pleads not guilty. No. 1, witness Sam Singh, hearing a noise at the prosecutor's house, witness went out, saw the child, Goonda, on whose clothes and person there was blood. She said that Ajmeer had taken her to the jungle on pretence of giving her wild figs, and that he had deflowered her. Witness and others then went to the prisoner's house and found him just

returning from the jungle. He was taken up in the court yard, and he denied having committed the act charged. There were three small spots of blood on his cloth, he said the marks were not blood.

Witnesses Nos. 2 and 3, Narain and Soojna, speak to the same effect.

Witness No. 4, Booka, is the grandmother of the child, Goonda, was out herding cattle accompanied by the child at a short distance from the village. The prisoner, Ajmeer, came and said to the child, Come and eat figs. So she went with him, shortly after the child returned crying and bleeding. She said that Ajmeer had committed a rape on her. Witness carried her home in her arms and applied some remedies to the parts which were ruptured. Witness did not see the prisoner in the act, neither did she hear the child cry out. The child was absent (while the sun would move) a spear's length. Witness did not see the prisoner after the fact.

Witness No. 5, Tooma speaks to the same effect as the witnesses, Nos. 1 to 3.

Witnesses Nos. 6 and 7, Bhoondla and Boodram—These witnesses speak to the condition of the child, Goonda, immediately after the fact; they saw blood on her thighs and on her clothes. She said that Ajmeer had violated her.

Witness No. 8, Boodhooram, native doctor, saw the child Goonda, in hospital on the 8th March, she bore marks of having been violated. She is about six years old and quite incapable of sexual intercourse.

The prisoner in his defence says that Boodram's son has taken the prisoner's sister into keeping, that prisoner made complaint to the landlord and thereby put Boodram to an expense of ten rupees, who therefore bears ill-will and has got up this false accusation. The prosecutor, Doss, is Boodram's nephew and is in collusion with him. The people inspected the place where Goonda said the crime was committed, but no traces were found. Many cowherds were in the neighbourhood and they would certainly have become aware of the fact. Besides this there are 29 families in the village, they knew nothing of it.

For the defence.

Witnesses Nos. 9 and 10, Goburdhun and Urjoon—These state that Boodram's son has the prisoner's sister in keeping. They are not aware of any other matter of defence.

Witnesses Nos. 11 and 12, Sirdar and Teenoo, know nothing.

The jury,* whose names and occupations are entered below, find the prisoner guilty as charged.

* Lalla Guzraj Singh Mukhtar,
Lalla Envut Lall ditto,
Lalla Luchmenarain ditto.

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In this verdict I concur. The circumstances stated in the evidence, are so strongly confirmatory of the statement made by the child, Goonda, that when taken with the statement, they make up a conclusive proof. Without that statement, they would be of little weight. That a rape has been committed on the child cannot be doubted. By whom was it committed? She, from the first moment, says it was committed by the prisoner. The child's grandmother saw the prisoner go with the child, and shortly after, saw her return in a deplorable condition. The prisoner was almost immediately afterwards taken up, and the persons who apprehended him state that they saw some spots of blood on his clothes. The prisoner denied the fact, and also denied that the spots were blood. The statement of the child, not being on oath, is not strictly evidence, but I see no reason to doubt its truth, and I therefore am disposed to receive it, not indeed as sufficient in itself, but sufficient as a material part of the proof. The prisoner has not made any substantial defence. His age is about eighteen years, I therefore, in consideration of his youth, would abate somewhat of the punishment applicable to such a heinous case, and I accordingly recommend that he be sentenced to imprisonment for five years with hard labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court, in concurrence with the jury and the deputy commissioner, convict the prisoner Ajmeer of rape on the body of a child about six years old, and sentence him, as recommended by the deputy commissioner, to five years' imprisonment with labor in irons.

PRESENT :

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

TRIAL No. 1.

GOVERNMENT AND JAN MAHOMED,

versus

HABOO SHEIKH (No. 12, APPELLANT,) AND KULIMOODEEN SHEIKH (No. 44.)

TRIAL No. 2.

GOVERNMENT AND HAZAREE SHEIKH,

versus

HABOO SHEIKH (No. 45, APPELLANT,) JOORAN CHOWKEEDAR (No. 46,) HURREE MOHUN DAS (No. 47,) SOORITTOOLLAH SHEIKH (No. 48,) MANOO SHEIKH (No. 49,) JOY CHAND DAS (No. 50,) JAMEER SHEIKH (No. 51,) JAMEER SHEIKH 2ND (No. 52,) GORIPOLLAH SHEIKH (No. 53,) MANOO SHEIKH 2ND (No. 54,) RAMJOY GHOSE (No. 55,) MANGUN SHEIKH (No. 56,) RAMNATH DAS (No. 57,) GOUR MOHUN DAS (No. 58,) NUBAI KHAN (No. 59,) SOOKUR MAHOMED SHEIKH (No. 60,) NEZAMDEE CHOWKEEDAR (No. 61,) MONEEROODEEN SHEIKH (No. 62,) ARJAN SHEIKH (No. 63,) RAJAI SHEIKH (No. 64,) BAWOOL SHEIKH (No. 65,) KUDDUM SIRDAR (No. 66,) BHUGYRUTH DAS (No. 67,) AND BAWOOL BHOEMALEE (No. 68.)

Rajshuhye.

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TRIAL No. 3.

GOVERNMENT,

versus

HABOO SHEIKH (No. 75, APPELLANT.)

May 4.

Case of
HABOO
SHEIKH and
others.

CRIME CHARGED.—*Trial No. 1.*—Nos. 12 and 44; 1st count, receiving portions of the property knowing at the time that such property had been obtained by burglary; 2nd count, being accessories after the fact in the aforesaid burglary by obstructing and maltreating the police jemadar and burkundazes of thannah Pungsa, and forcibly rescuing from them a portion of the abovementioned property.

Trial No. 2.—Nos. 45, 48, 64 and 65; 1st count, burglary in the godown of Mr. Stevenson, employer of Jan Mahomed Sheikh prosecutor, in which 203 indigo cakes to the value of Rs. 285 were stolen; 2nd count, Nos. 45, 46, 48, 54, 59, 64, 65 and 68, receiving portions of the abovementioned property knowing at the time that such property had been obtained by burglary; 3rd count, Nos. 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56,

The prisoner was convicted of receipt of stolen property and obstructing the police in the discharge of their duty connected with the robbery charged.

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57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 and 68, being accessaries after the fact in the aforesaid burglary by obstructing and maltreating the police jemadar and burkundazes of thannah Pungsa, and forcibly rescuing from them a portion of the abovementioned property.

Trial No. 3.—No. 75, 1st count, receiving portions of indigo cakes to the value of Rs. 290 which were stolen from the godown of Mr. Rainey, the prosecutor's employer, knowing at the time that such property had been obtained by burglary; 2nd count, being an accessary after the fact in the aforesaid burglary by obstructing and maltreating the police jemadar and burkundazes of thannah Pungsa, and forcibly rescuing from them a portion of the property.

CRIME ESTABLISHED.—*Trial No. 1.*—No. 12, knowingly receiving property stolen in burglary, and aiding and abetting in maltreating and obstructing the police in the execution of their duty and taking from them indigo found in the house of Jussoda Bustomee, No. 44, being an accessary both before and after the fact to a burglary in an indigo-godown.

Trial No. 2.—Nos. 45 and 49, knowingly receiving property stolen in burglary and aiding and abetting in maltreating and obstructing the police in the execution of their duty and taking from them indigo found in the house of Jussoda Bustomee. Nos. 46, 47, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 66, 67 and 68, aiding and abetting in maltreating and obstructing the police in the execution of their duty, and taking from them indigo found in the house of Jussoda Bustomee, and Nos. 48, 64 and 65, being accessaries before and after the fact to a burglary in an indigo-godown, and aiding and abetting in maltreating and obstructing the police in the execution of their duty, and taking from them indigo found in the house of Jussoda Bustomee.

Trial No. 3.—No. 75, knowingly receiving property stolen in a burglary and aiding and abetting in maltreating and obstructing the police in the execution of their duty, and taking from them indigo found in the house of Jussoda Bustomee.

Committing Officer.—Mr. F. Beaufort, officiating joint-magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye on the 20th February, 1854.

Remarks by the sessions judge in Trial No. 1.—Though the trial of this and the next two cases occupied sixteen days, and the law officer took three to draw up his *futwa*, a few words will explain the nature of the case, and the evidence on which the two prisoners are convicted. Though called a burglary, it was in fact a robbery committed in an indigo-godown*situate and adjoining to the joint-magistrate's residence by breaking through the *jaffery* or brick fretwork of an arch, and taking

from the *muchans* or racks, indigo cakes placed there to dry, and, as stated, the robbery was committed on the night of the 5th September last. The prisoner, No. 12, in the mofussil and again before the joint-magistrate, confessed to taking a bag containing indigo-cakes, among which were some having the mark of the Manjeeparah concern, and placing it behind the house of a woman by name Joy Doorga (the sister of No. 14, acquitted,) and in his pointing out the place, the bag and some cakes of indigo were found in some *jungle* behind the house. On these confessions, which were proved to have been voluntary, as well as evidence to the finding of the indigo, the law officer convicts him of knowingly receiving stolen property in this case. No. 44, in the mofussil and again before the joint-magistrate confessed to going with the prisoners, Nos. 27, 42 and 43, (all acquitted) to Pubna, and that they brought to near Manjeeparah; at night the other three went on shore and brought back three bags which they put on board his boat. These were taken to the village of Mahinchee, when Nos. 36 and 37 (acquitted) came and took away the bags, and one of the party said they contained indigo brought from the Manjeeparah factory. On these confessions, also fully proved to have been voluntarily made, the law officer convicts the prisoner of being an accessory both before and after the fact to the robbery, and, concurring in the conviction of both, I have sentenced No. 44 in this case and No. 12, in trial No. 3.

Sentence passed by the lower court in trial No. 1.—No. 44 to three years' imprisonment with labor and irons.

Remarks by the sessions judge in trial No. 2.—This was precisely a similar robbery to that detailed in the preceding case. It was perpetrated in the Nazirgunge factory to the south-east of the district in the Pungsa thannah, and the occurrence took place on the 5th of August, or just a month before the Manjeeparah robbery. At the time no trace of the perpetrators was discovered, but among the indigo found behind the house of Joy Doorga Bewah were some cakes having the Nazirgunge marks; and these the prisoner No. 45, (No. 12, of the 1st trial) admitted in his confession (made in trial No. 1) that he had placed where they were found. No. 54 also produced some cakes of indigo from two *haurees*, or pots, which he said he saw another person place in some *jungle*, and one of these had the Nazirgunge mark on it; Nos. 48, 64 and 65 confessed in the mofussil, and again before the joint-magistrate, that they went in a boat with the prisoner No. 45, and others to the Nazirgunge bazar, when at night No. 45, and others went on shore with four bags, and after remaining away some time brought back three bags of indigo which they put on board the boat, they then proceeded with them to Chunduna Nuddy and next day to Malunchee. That they received one rupee each, and for

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the boat hire one rupee. On this evidence the law officer convicts Nos. 45 and 54 of knowingly receiving stolen indigo, and the other three prisoners of being accessories both before and after the fact to the robbery; and the four last have been sentenced as herein stated for their complicity in the robbery, as well as for obstructing the police in the execution of their duty and rescue of indigo bags; what led to the 3rd count will be best understood from the joint-magistrate's own account of the transaction entered in column 14 of the Calendar in trial No. 1.

At this time, I received information that some valuable property, supposed to be the plunder obtained in a dacoity in thannah Hurroyal, had been taken to a house near thannah Pungsa. This information was given by witness No. 21, to certain Muskoree Peadahs (witnesses Nos. 10 and 67,) I caused the attendance of two persons (witnesses Nos. 14 and 15,) whose houses had been lately dacoited, and sent them with the peadahs to Pungsa, with orders to the police to search the houses indicated. The mohurrir (witness No. 65,) with the jemadar (witness No. 6,) and a party of burkundazes proceeded to the spot, and surrounded the house of Kalachand Bhoomick (prisoner No. 36,) the head of the gang of robbers now committed. Immediately they were opposed by a large party; but a parley ensued, and while thus engaged, witness No. 10, told the mohurrir that the people were collecting with a threatening import, and that the property would be removed, if the house of Jussoda Bustomee were not searched at once. The mohurrir accordingly retained a few of the party and dispatched the jemadar and the others on that duty, which they accomplished, finding three bags full of cakes of indigo, stamped with the Manjee parah and other marks. They had hardly left the house of Jussoda Bustomee (who was the mistress of Kalachand's father) before they were attacked by a mob, who assaulted them and forcibly carried off the indigo. It is proved that prisoners Nos. 12 to 44 were concerned in this attack. It occurred in a part of the road where water had lodged and it happened that in the course of the tumult one of the bags broke, and several cakes of indigo fell to the ground. These escaped the notice of the rioters, but were observed by the jemadar who picked them up after the departure of the rioters, and with great presence of mind immediately forwarded them to the thannah by witnesses Nos. 10 and 20. The cakes were then delivered to his son (witness No. 59,) and retained by him till the next morning, when the mohurrir (very improperly) went to the thannah and took possession of them. It would seem that prisoners Nos. 36 and 37, followed the mohurrir to the thannah, and endeavoured to negotiate for the return of these cakes, or for their exchange for cakes manufactured at their own factory. But the mohurrir though apparently well inclined to assist them

was afraid to venture so far, and the cakes, which bear the Manjeeparah mark, remained in the hands of the police until they were produced on trial.

Now this is evidently a mistake, or the cakes in the box produced have been changed. Only *one* cake was recognised as having the Nazirunge factory mark. The fact of the police being resisted (I should call it) in the execution of their duty, was fully proved, but I informed the law officer that it was *essential* for the conviction of the prisoners of accessaryship after the fact, in taking away the indigo, that it be proved or shown, that such indigo had actually been stolen or robbed on the days set forth in the charge from the factory, or factories, and that the prisoners were *aware* of this fact. It was true, one cake found by the jemadar in the water had, or bore the Nazirunge mark, but unless he held it, proved it had been stolen on the 5th of August last from the factory, he could not, in my opinion, convict the prisoners implicated in taking the bags with the robbery, or make them accessaries after the fact. He has accordingly found them guilty of being present, aiding in obstructing and maltreating the police (the jemadar was assaulted with a stick) and concurring in the finding, I have sentenced No. 45, as the principal, in the next case, and No. 46 as the most culpable, being himself a police chokeedar, to two years' imprisonment with labor commutable on the payment of a fine of Rs. 50, all the others, as it was impossible under the *futwa* to make any distinction as to their guilt, I have sentenced to pay a fine of 50 Rs. each or six months further imprisonment. They have already been confined in the jail for nearly five months, having been apprehended on the 23rd or 24th of September, 1853. Had the case been divested of this charge, or count, it would in my opinion, have been much better. There was evidently treason and counter-treason and plot and counter-plot. The very persons who betrayed their employers and gave intimation to the Nazir's peadahs, afterwards joined the party who seized and took away the indigo bags from the heads of the men who were carrying them to the house of Nos. 69 and 70, (acquitted) where the mohurrir was staying, while the jemadar conducted the search, not it may be remarked for *stolen indigo*, but property *plundered in dacoity*, and if on such vague evidence parties could be committed as accessaries *after the fact* to stealing indigo, for the cakes according to the jemadar (all had European factory marks), the prisoners might be charged with accessaryship to every indigo robbery that had taken place before the occurrence, on the taking away the bags from the police at Malunchee.

Sentence passed by the lower court in trial No. 2.—No. 46, to be imprisoned without irons for the period of two years and to pay a fine of 50 Rs. on or before the 22nd March next, or in default of payment to labor until the fine be paid or the term of

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1854. his sentence expires. Nos. 47, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 66, 67 and 68, to pay a fine of 50 Rs. each or in default of payment to be imprisoned without labor or irons for the period of six months: and Nos. 48, 64 and 65 to three years' imprisonment with labor and irons and No. 49, to four years' imprisonment with labor and irons.

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SHEIKH and
others.

Remarks by the sessions judge, in trial No. 3.—This prisoner is the same as No. 12 of the 1st trial, and No. 45 of the 2nd. The evidence against him consists of the confessions attested in trial No. 1, and the evidence of those witnesses to his pointing out a bag in which there were indigo cakes found, and among them six were recognised by the witness No. 1, one by witness No. 2, and five by witness No. 3, as belonging to the Goalrund factory. The mohurrir or government prosecutor examined witness No. 22, the servant of the Bhoomicks, to prove that the prisoner brought three bags of indigo one night to their house and said it came from Goalrund, but I put not the least confidence in his testimony, though made an approver by the joint-magistrate in this and the preceding trial, as he first betrayed his master and then joined the party who took the three bags of indigo from the police. The law officer in his *futwa* convicts the prisoner again of being a receiver knowingly of stolen indigo and concurring, I have sentenced him in this trial for being a receiver in three cases of burglary and obstructing and maltreating the police in the execution of their duty, and taking from them indigo found in the house of Jussoda Bustomee to seven years' imprisonment with labor and irons. In the attack made on the police he was no doubt the leader. This being the last trial, the prisoners all put in their defences in this case, and examined witnesses; but as none of the prisoner No. 75's witnesses were in attendance and he said, nay insisted, some females could establish his innocence if summoned, the case as regards him was postponed on the 16th of February, but the next day he was brought up by the Nazir's Bukshee and gave in a petition declining to examine the witnesses he had named, though informed they had been summoned. The law officer was therefore directed to give his *futwa* in all the cases for him, as well as the rest, I advert to this fact in case of any appeal, but the whole circumstances have been recorded in the proceedings.

Sentence passed by the lower court.—Haboo Sheikh to seven years' imprisonment with labor and irons, being a consolidated sentence for three offences passed upon him.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court, having considered the grounds of appeal of the prisoner, Haboo Sheikh, and examined the record of trials in the cases, Nos. 1, 2 and 3, see no reason for interference with the consolidated sentence of seven years' passed on him by the sessions judge.

PRESENT :

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND ANOTHER,

versus

RUTTUN NAKARCHY.

Dacca.

1854.

CRIME CHARGED.—1st count, burglary in the house of Oodye-chand Manjee, prosecutor, and theft of property to the amount of six pie ; 2nd count, receiving and possessing property, knowing it to have been acquired by the above burglary and theft.

CRIME ESTABLISHED.—Burglary and theft in the prosecutor's house.

Committing Officer.—Mr. W. H. Brodhurst, officiating joint-magistrate of Furreedpore.

Tried before Mr. C. T. Davidson, commissioner, of Dacca with powers of a sessions judge, on the 1st February, 1854.

Remarks by the commissioner.—The prisoner is charged with burglary and theft of property valued at six pie. The prosecutor states that one night in Jyete last, he heard the noise of a person moving about inside his house. He got up and seized him, but could not retain his hold on him. He gave alarm and his neighbours came to his assistance and captured the prisoner, as he was making his escape from the hole by which he had entered his house. It is clearly established by evidence, that the house of prosecutor was burglariously broken into, and that the prisoner was captured as he was making his escape from the entrance that had been effected. The prisoner confesses both before the police and the joint-magistrate, and these confessions have been duly attested. Some grain was found in an earthen vessel, near the hole by which prisoner had entered prosecutor's house, which had been carried out by the prisoner. The prisoner denies the charge before this court, but his defence is worthless. It appears from the report of the foudjary record-keeper that the prisoner has been before convicted, once of cattle-stealing and once of burglary. He has been six or seven times convicted and punished for escaping from jail, where he appeared to have passed fifteen years of his life, and to have suffered corporal punishment at different times to the extent of 150 rattans. He appears to be an irreclaimable offender, and a severe sentence is called for, notwithstanding the small amount of property, which does not affect the character or heinousness of the offence. The *futwa* of the law officer convicts the prisoner of the charge, and in concurrence therewith, he has been sentenced to ten (10) years' imprisonment with hard labor in banishment.

May 4.

Case of
RUTTUN
NAKARCHY.

The prisoner, an old offender, was sentenced to imprisonment for ten years, on conviction of burglary and theft of property in value only six pie.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The charge is proved against the prisoner, by the evidence for the prosecution and his own confessions. We reject his appeal.

May 4.
Case of
RUTTUN
NAKARCHY.

PRESENT:

J. DUNBAR AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT AND SUMBHOONATH SHA,

versus

TARACHAND DEB (No. 5,) SHEIKH MEEAJAN (No. 6, APPELLANT,) AND SHEIKH DHOLOO (No. 7, APPELLANT.)

Mymensingh.

1854. CRIME CHARGED.—Prisoners, Nos. 5 and 6; 1st count, burglariously stealing from the house of the prosecutor cash and property, valued at Rs. 78-9; 2nd count, prisoners Nos. 5, 6 and 7, knowingly receiving and possessing the property obtained by the above theft.

May 5.

Case of
SHEIKH

MEEAJAN and
others.

Two prisoners
convicted by
the sessions
judge of bor-
glary and
theft, and a
third prisoner
of receiving
stolen goods.

Conviction
and sentence
upheld in ap-
peal.

CRIME ESTABLISHED.—Prisoners Nos. 5 and 6, burglary and theft, and knowingly receiving stolen property. Prisoner No. 7, knowingly receiving stolen property.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. Trotter, sessions judge of Mymensingh, on the 2nd March, 1854.

Remarks by the sessions judge.—The prosecutor, Sumbhoonath Sha, having communicated to the police that he suspected the prisoners Nos. 5 and 6 and others, of having committed the burglary at his house, the police apprehended the parties, who confessed the crime and made over the property stolen: viz. No. 5, gave up from under the ground of a *chunkhet*, property Nos. 1 to 8 and 17, and by the direction of No. 6, No. 7 gave up property Nos. 9 to 16. When the inquiry into this theft was going on, No. 5 delivered some portion of the property stolen from the house of the prosecutor in the preceding case, No. 6 on his apprehension, stated before the police and also before the magistrate that he, No. 5 and others, committed the theft and received their respective portions of the spoil. In this court, he denied his mofussil and foudary confessions and urged ill treatment by the police. No. 5 stated before the police that he did not commit the theft, but had only kept the property which Meeajan, No. 6, gave him to secrete, and he accordingly concealed it under the ground in the *chunkhet*, whence he gave it up. Before the magistrate he said that he was asked by No. 6 to keep it, but he declined, so No. 6 himself concealed it in the

field, and that he only pointed out to the police where it could be found. In this court he denied the charge and stated that he gave up no property. Prisoner No. 7 in the mofussil and before the magistrate stated he purchased the articles he gave up for Rs. 8-12, and concealed them through fear when he heard that the police had arrived in their village. In this court, however, he denied having either bought or given up any property, and stated that he was ill-treated by the police and did not confess. No. 5 did not examine any witnesses and those cited by No. 7, knew nothing in his favor. The jury declared prisoners Nos. 5 and 6, guilty of burglary and theft and knowingly receiving stolen property, and No. 7 of the 2nd count only, in which verdict, I concurred. No. 5 has been sentenced to a consolidated punishment of five years' imprisonment, as he has been convicted in two cases of theft.

Sentence passed by the lower court.—No. 6 to be imprisoned with labor and irons for the period of four (4) years. No. 7, to be imprisoned with labor and irons for the period of two (2) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The prisoners, Nos. 6 and 7 have appealed; we see no reason to dissent from the finding of the sessions judge and the respectable jury of three vakeels, who sat with him on the trial, and reject the petition.

PRESENT:

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

HONOO PODE (No. 7,) HULLODHUR GHOSE (No. 8,) HURROCHUNDER DOME (No. 9,) AND KAYUA FAKEER (No. 10.)

Hooghly.

CRIME CHARGED.—1st count, dacoity in the house of Chundeechurn Bose at Golabatee in which property to the amount of Rs. 185-4, was plundered; 2nd count, having belonged to a gang of dacoits.

1854.

Committing Officer.—Baboo Chundersekor Roy, deputy magistrate of Hooghly, under the commissioner for the suppression of dacoity.

May 5.

Case of
HONOO PODE
and others.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 20th April, 1854.

One prisoner released, one of the approv-

1854.
May 5.
Case of
SHRIKH
MEKAJAN and
others.

1854.

May 5.

Case of
Honoo Ponde
and others.

ers not having
mentioned him
when he was
confessing to
the dacoity at
the time of its
occurrence, of
participation
in which he
now accused
him.

Remarks by the officiating additional sessions judge.—The prisoners were committed by the deputy magistrate, under the commissioner for the suppression of dacoity, and are charged firstly, with dacoity and, secondly, with having belonged to a gang of dacoits. They plead *not guilty* to the indictment.

* Witnesses Nos. 1, 2 and 3.

The witnesses marginally* noticed, are approvers on the establishment of the dacoity commissioner, and prove the charge against the prisoners. They detail the particulars of the dacoity committed in the house of Chundeechurn Bose of Golabatee, on the night of the 2nd October, 1850, showing the prisoners' complicity therein, and mention several other instances in which they took part in dacoities committed at different times and in different places.

† Witness No. 4.

The witness indicated in the margin† proves the occurrence of the dacoity charged.

The prisoners deny the charge and impute malicious and vindictive motives to the approvers, in giving evidence against them. They call witnesses to character, but the testimony does not avail them.

The approvers' evidence convicts the prisoners of both counts of the charge, and that evidence is supported by the detailed confessions made by the witnesses, when first apprehended and charged. These confessions are verified by the records of the several magistrates, in whose districts the admitted dacoities took place and shown to have been recorded under circumstances which precluded all possibility of collusion between the confes-saries. The proof against the prisoners therefore is complete, and I would recommend that they be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.)

Mr. A. Dick.—All three of the approvers' witnesses, Nos. 1, 2 and 3, have named prisoner, No. 7, Honoo Ponde. He was too named by some of those, who confessed after apprehension at the time of the dacoity of Golabatee. The evidence, therefore, against him is satisfactory and conclusive.

The evidence against prisoner, No. 9, Hurrochunder, though not so strong in the case of Golabatee, is satisfactory even there, as he was named by one of the principal confessing prisoners, who was committed for trial; and the evidence against him in the other cases is corroborative. The evidence against the prisoner, Kayua, No. 10, of belonging to a gang of dacoits, is full, on the depositions of two of the approvers, I would, therefore, convict all these and sentence them as recommended. The evidence against the prisoner, No. 8, Hullothur Ghose, consists solely of the depositions of the approvers, Loylal, witness No. 1, and of Rama, witness No. 2; Loylal was apprehended

at the time of the dacoity, and in his confession, dated 13th October, 1850, named Honoo Poda, prisoner No. 7, and mentioned six others, whose names he did not know. Several other prisoners at that time named a great many, yet not one named Hulodhur. The naming of him, therefore, by Loylal, more than three years after, in December, 1853, and by Rama, whose testimony in the other cases is single against this prisoner, can have little weight in a conviction and sentence of transportation for life. There being no other evidence against him, and he was never before apprehended, I would therefore acquit him.

Mr. B. J. Colvin.—I concur.

1854.

May 5.

Case of
Honoo Poda
and others.

PRESENT :

SIR R. BARLOW, BART., AND H. T. RAIKES, Esq., *Judges.*

MUSST. BILAHEE CACHARRENEE,

versus

IMPHOO CACHARREE.

Assam.

CRIME CHARGED.—Wilful murder.

Committing Officer.—Lieut. G. F. Vincent, magistrate of Durrung.

1854.

Tried before Capt. J. Butler, officiating deputy commissioner of Assam, on the 3rd April, 1854.

May 5.

Remarks by the officiating deputy commissioner.—The case was tried before Lieut. Vincent, magistrate of Durrung with the assistance of a jury, and referred to this court in the manner prescribed in Clause 5, of Section 2, of the rules for the administration of justice in Assam.

Case of
IMPHOO CA-
CHARREE.

I annex the magistrate's report No. 2, of 17th March, 1854, which accompanied the proceedings of his court.

Prisoner con-
victed of the
wilful murder
of his infant
child by twist-
ing its neck,
throwing it on
the ground,
and subse-
quently bury-
ing it alive;
sentenced ca-
pitally.

The purport of the evidence is explicitly detailed in the following extracts.

“Musst. Bilahee, states that, I am married to the prisoner Imp-hoo Cacharree according to the Cacharree custom, and in Assar last, I was delivered of the deceased child Musst. Lodec, and there being no one in the house except my husband, I was obliged to attend constantly to the child, and could not therefore give full attention to domestic duties, the prisoner annoyed at this, threatened in the current month of Falgoon, some day to kill me and my child. Some days since I had put the deceased to sleep on a mat, and about midnight was sitting near the fire

1854.

May 5.
Case of
IMPHOO CA-
CHARREE.

preparing cotton, when the prisoner abused me, and said I had neglected to collect the *kannee* from the poppy garden, and getting up from the place where he was lying, he kicked me three blows on the chest, he also raised the deceased child from the mat, on which she was sleeping, and said he would kill her, at the same time twisting her neck, he threw her with force on the ground, when I took her up and laid her on my lap, the prisoner then snatched her from me, and buried her while still alive. Being much distressed in mind, and in fear for my own life, I cried bitterly and fell asleep. The following morning on awaking, I went to Khefying and Sumahgoon Benahs and Shookram Cacharree of my village, and informed them of what had happened; they took me to Betal, the Chowdry of the mouzah, who returning apprehended the prisoner in my house, he acknowledged that he murdered the child and buried it alive, and shewed the place where the corpse was buried. The chowdry made Ayoozah Cacharree disinter it, and sent it with the prisoner and witnesses to the thannah at Kooreeahparah where the prisoner made a full confession.

"The deceased child was buried about four *tars* distant on the east side of my house. There was no one present when the prisoner killed and buried the child, and as there was no house near, and being night, I did not tell any one what had happened. There were no marks or wounds on the body of the deceased. The child was born in Assarh last, how many months that is I cannot say, the child was of fair complexion and in good health. The prisoner was not intoxicated when he committed the murder. I cooked his dinner and he eat it and went to sleep.

"Imphoo Cacharree prisoner pleads guilty.

"Nos. 1, 2 and 3, witnesses named in the margin,* deposed

* Witnesses for prosecution:—

No. 1, Khefying.

No. 2, Surmah, Gaom Bonah.

No. 3, Shookram.

on oath that on the morning following the murder of the deceased child, Musst. Lodee, about six days since, the prosecutrix Musst. Bilahee acquainted them with the circumstances attending it, when they took her to Betal, the Chowdry of the mouzah, who proceeding to the prisoner's house had the child disinterred and conveyed to the thannah at Kooreeahparah, where the prisoner confessed his guilt. They also were present at the *post mortem* examination of the corpse by the native doctor.

"Depose to having been present at the disinterment of the

No. 4, Nagah Cacharree.

„ 5, Bhogee.

deceased child, and to having accompanied the corpse to the thannah, and that they heard the confession of the prisoner and saw the *post mortem* examination of the corpse by the native doctor.

"Deposes having brought the corpse to the thannah, and the
No. 6, Bukur Cacharree. *post mortem* examination of it by the
native doctor.

No. 7, Boodu Cacharree. "Deposes to the same purport as Nos.
1, 2 and 3 witnesses.

"Depose to having been present when Rajub Allee, native
doctor, made a *post mortem* examination
No. 8, Getteh Patgini. of the body of deceased, and to having
,, 9, Rajub Allee. seen a fracture on the skull about eight
,, 10, Joy Rabah. fingers in length. Rajub Allee native
,, 11, Dunoo Kagotee. doctor deposes to having conducted the

post mortem examination, and found a fracture on the left side
of the skull with a quantity of coagulated blood collected there.

"Depose to having heard the confession of the prisoner
at the thannah and before the magis-
No. 12, Lodur Kagotee. trate.
,, 13, Boleeram Ka-
gotee.

"Imphoo Cacharree prisoner offers no defence. He fully and
freely confesses his guilt, stating that he was angry with his
wife at the time he killed his child, the deceased Musst. Lodee,
and buried her alive.

Verdict of the jury.—"The jury unanimously find the prison-
er Imphoo Cacharree guilty of wilful murder.

Opinion of the magistrate.—"This is one of the most revolt-
ing cases it is possible to conceive. There is not a single extenu-
ating circumstance connected with it. The whole conduct of
the prisoner, from the first assault on his wife to the last tragi-
cal scene, is so utterly brutal, that it is impossible to feel any
pity for him or extend towards him the slightest mercy. The
prisoner would appear to have deliberately murdered his daughter
the deceased Musst. Lodee, by first throwing her on the ground,
and then burying her while still alive, and moreover to have
threatened some time previously to murder not only his child,
but his wife also, merely because from the tender age of her
child and the absence of any other person in their house, to whom
she could entrust it, the latter was unable to attend constantly
to her domestic duties. The jury find the prisoner Imphoo Ca-
charree guilty of wilful murder and, concurring in their opinion,
I would recommend him to be sentenced capitally by being
hanged by the neck till he is dead."

Opinion of the officiating deputy commissioner.—"This is a most
atrocious case of wilful murder. The prisoner appears to have
eaten his food in the evening and retired to rest, and about mid-
night rose and brutally assaulted his wife, by kicking her three
blows on the chest and then deliberately seized his infant daugh-
ter Musst. Lodee, sleeping on a mat, twisted her neck and threw
her violently on the ground.

1854.

May 5.

Case of
IMPHOO CA-
CHARREE.

1854.

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Case of
IMPHOO CA-
CHARREE.

The prosecutrix on this took the child up in her lap; but the prisoner immediately snatched the child from her and buried her whilst still alive. This is clearly detailed in the evidence of the prosecutrix, the only eye-witness to the murder; the next morning the prosecutrix having acquainted her neighbours of what had occurred, the Chowdry in charge of the mouzah and others repaired to her house, had the child disinterred, and conveyed to the thannah, where a *post mortem* examination was held on the body of the child by the native doctor, who states that the skull was fractured on the left side and that a quantity of coagulated blood was collected there.

The voluntary confession, made by the prisoner at the thannah and before the magistrate, is established by several witnesses; the prisoner offers no defence, he merely states that being angry at the time with his wife he killed his child and buried her alive; the only reason assigned for this diabolical heartless deed is that stated by the prosecutrix, that her husband was annoyed with her for not giving more attention to domestic duties, and on this account he had in the current month of Falgoon (February) threatened to take her life and the child's also, the inference therefore is that the prisoner committed the murder with premeditation. This conduct being unworthy of any leniency, and no extenuating circumstance appearing in the case, after mature consideration of the whole proceedings, it is my duty to recommend that the prisoner Imphoos Cacharree be sentenced to suffer death.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. H. T. Raikes.)

Mr. H. T. Raikes.—This is a very bad case; the prisoner has pleaded guilty throughout, to the murder, and as I agree with the deputy commissioner, that capital sentence should be passed upon him, I send the case for the consideration of a second judge.

Sir R. Barlow.—The prisoner's confessions before the lower court, and before the jury, who sat on the trial, are full, and clearly prove that the prisoner having first snatched the infant six months old from his wife's lap, dashed it on the ground, and afterwards buried it while alive. There is not a single circumstance of mitigation on the record: I concur in passing capital sentence on the prisoner.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT AND CHERAGALLY,

versus

SULLEEMOODDEEN (No. 6, APPELLANT) AND SHEIK
ARMAN (No. 7.)

Dacca.

1854.

May 5.

Case of
SULLEEMOOD-
DEEN and an-
other.

Two prisoners
convicted of
riotously as-
sembling in an
armed body
attacking a
boat, assault-
ing the crew
and plunder-
ing the pro-
perty, sentenc-
ed by the ses-
sions judge to
three years'
imprisonment.
Appeal re-
jected.

CRIME CHARGED.—1st count, committing a dacoity on the boat of Cheragally on the river and plundering therefrom property (mustard seed) to the value of rupees 440; 2nd count, riotously assembling in an armed body, attacking the boat of the prosecutor, Cheragally, assaulting the mullahs and plundering the above-mentioned property; 3rd count, being accomplices in the above-mentioned crime; 4th count, being accessaries to the above-mentioned crime, both before and after the fact on the 7th October, 1851.

CRIME ESTABLISHED.—Riotously assembling in an armed body, attacking the boat of the prosecutor, assaulting the boat-people and plundering the property.

Committing Officer.—Mr. C. Mackay, principal sudder ameen of Furreedpore, exercising the powers of a magistrate.

Tried before Mr. C. T. Davidson, commissioner of Dacca, with powers of a sessions judge.

Remarks by the commissioner.—The prisoners are charged with dacoity and plundering from the boat of prosecutor property to the amount value of Rs. 440, and with other counts as entered in column 9.

The circumstances of this case were detailed in the abstract statement of prisoners punished without reference for the month of February, 1852, from which the following is an extract

“On reading the commitment proceedings in this trial, it was evident to me that the case was not one of dacoity, nor indeed had any semblance to one, the origin of the affair being nothing more than a question as to the particular bazar at which the prosecutor should sell his cargo. I consequently directed the law officer to sit on the trial and required from him a *futwa* on the minor charges. It appears that the prosecutor took in a cargo of mustard seed in zillah Monghyr, and was on his way to Modhookally bazar in this district to dispose of it. On the 3rd of December last, he was sailing down the Chunduna river, and when arrived at Musnudpoor bazar, which is on its bank, he was hailed from the bazar by some people and required to bring his boat to the ghaut. This he refused to do, urging that he was going on to Modhookally, on which two *dinghis* with a number of men on board were sent off by the prisoners, Nos. 21

1854. and 22, and one Nubboo Sircar (not yet arrested) to bring the boat to the shore, which was done and the boat secured. Prosecutor appears to have gone on the following day, by land to

May 5.

Case of
SULLREMOOD-
DEEN and
another.

Modhookally (stated to be about six miles distant from Musnudpoor) and returned the next day with a letter from Hosain Mirdha of Modhookally to the prisoner, No. 21, begging him to release prosecutor's boat, but he still refused to do so. On the next day, the 7th December, he again went to Modhookally and his Auruddar, Dwarkanath Koond, induced a police guard-boat that was passing Modhookally to go and release prosecutor's boat. The guard-boat manjee took prosecutor on board and went to Musnudpoor and on reaching that bazar, prosecutor ordered his boat men to loose his boat and go to Modhookally, which they did, but they had not proceeded far when three boats with armed men came off and, setting the police guard-boat at defiance, again carried the prosecutor's boat back to the ghaut. The guard-boat manjee on this left the place, taking the prosecutor with him, whom he landed at the nearest spot to the thannah, where he went and laid his complaint on the 8th December. The case was inquired into by the police, and the prisoners arrested and finally committed on the charges above detailed. From the evidence of the eye-witnesses, of whom nine have been examined, the seizure and detention of prosecutor's boat in the first instance on the 3rd of October, with a view to compel him to sell his cargo at Musnudpoor bazar, and in the 2nd instance, on the 7th idem, the forcible seizure and detention of prosecutor's boat, assault on the boat people, defiance of the river police, and subsequent sale of part of the cargo are proved against the prisoners, Nos. 21, 22, 23, 24, 25 and 26. The recovery of portion of the property from those who purchased is also established by the evidence of witnesses, and the confessions of the purchasers themselves." Three of the witnesses to the facts of this case, who deposed at the original trial, have again appeared before this court and been re-examined, and adhere to their former statements. They recognize the prisoners as having taken part in the riotous attack, &c. on prosecutor's boat. The prisoners deny the charge. No. 6, pleads an *alibi*, but the plea is not established by his witnesses. The prisoner No. 7, pleads enmity between his landlord and the landlord of the witnesses for the prosecution, and his witnesses speak to this plea, but in the face of the direct evidence against him, it is inadmissible. The *futwa* convicts both the prisoners of the attack, &c., on the prosecutor's boat, and, in concurrence with this finding, they have been sentenced as mentioned in the statements. This trial came before the superior court in appeal, and the conviction and sentence of this court were upheld by the presiding judge (Mr. A. J. M. Mills) on the 4th May, 1852.

Sentence passed by the lower court,—Prisoner No. 6.—To be

imprisoned without irons for three (3) years from this date, and to pay a fine of fifty (50) rupees on or before the 23rd day of February, 1854, or in default of payment to labor until the fine be paid or the term of sentence expires.

Prisoner No. 7.—To be imprisoned without irons for three (3) years from this date and to pay a fine of twenty-five (25) rupees, on or before the 23rd day of February, 1854, or in default of payment to labor until the fine be paid or the term of sentence expires.

Remarks by the Nizamut Adawlut.—(Present : Messrs. J. Dunbar and H. T. Raikes.) The particulars of this case are given in this Court's remarks, on the trial of other offenders in the case dated 4th of May, 1852. The prisoner was named in the first statement of one of the chief witnesses and also by two of his confessing associates, and when arrested was identified by the witnesses for the prosecution. We see no reason to interfere with the conviction of this prisoner and reject the appeal.

PRESENT :

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT AND MUSST. JEETIA,

versus

POONAE (No. 5,) CHUMMUN (No. 6,) AND BHAG-MUL (No. 7.)

CRIME CHARGED.—Wilful murder of Jeea Gowalla.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 24th April, 1854.

Remarks by the sessions judge.—It appears that the deceased had an intrigue with a woman, named Nemea, sister of the prisoner, Poonae, and he was also said to have formed an improper intimacy with another woman, called Sunechree, a slave girl belonging to one Sook Lall Pooree, a Gosain, who owned twenty beegahs of jageer land in mouzah Sowda, Pergunnah Bismuck, upon the lands of which village the crime was committed. It is surmised that the murder might have been done by the prisoners at the instance of the Gosain above named, or with equal probability, in order to gratify a personal vengeance for the indignity which the deceased had put upon Nemea. The three prisoners are all nearly related. That they did perpetrate the murder is proved by so strong a line of circumstantial evidence as to leave no doubt on my mind of their guilt. But there is no evidence to the fact of the murder, and it is on these grounds

1854.

May 5.

Case of
SULLERMOOD-
DEEN and
another.

Patna.

1854.

May 5.

Case of
POONAE and
others.

Two out of
three prisoners
acquitted on a
charge of wil-
ful murder ;
the Court plac-
ing no reliance
on the evi-
dence of wit-
nesses, not
brought before
the darogah
until the end
of his inquiry.
A third pri-
soner, with
whose sister
the deceased

1854. that the *futwa* of the law officer acquits. It is shown in the evidence that the prisoners called at the house of the deceased, on the evening of Tuesday, the 21st February last, and asked him to come and drink with them. That on the day of the occurrence, he raised a few pice by the sale of five seers of grain at the

May 5.
Case of
POONAE and
others.

had intrigued,
convicted as an
accomplice in
murder, and
sentenced to
transportation
for life.

muth of Sook Lall Pooree, where he left his blanket, and during the night of Tuesday the prisoner, Chummun, came and fetched it away, saying the deceased wanted it. The deceased and the three prisoners were seen during the evening of

Tuesday drinking together by the witnesses noted in the margin,* and subsequently seated at the *khullean*, stack yard of Poonae, talking together. An hour or two before day-light the witness, Koonjah No. 7, was returning from a call of nature to his own *khullean*, situate a short distance from that of Poonae, when he saw and recognized the three prisoners carrying something in a blanket which they deposited in a

wheat-field and left it. On reaching his *khullean*, the witness communicated what he had seen to Khugput, witness, No. 8, and both returning together to the spot, they there found the body of the deceased. Fearful however of consequences, they did not give any alarm at that time. The bearing of these two witnesses before this court was decidedly good. On the morning of Wednesday, the body was found horribly mutilated with the private parts cut and lacerated in such a manner, as to warrant the inference that the murder was done out of revenge on the deceased, for having disgraced a female. Witness No. 9 Choonuk, saw and recognized all three prisoners coming from the direction of the wheat-field, in which the body was found an hour or two before day light. Exchanging some words with them, they said they had been looking for some stray cattle. The witnesses, Nos. 10 and 11, who are men of respectability, one being Burahil of mouzah Soondee and the other a shop-keeper in the village, deposed to finding in the *khullean* of Poonae, in the morning following the murder, underneath some sheaves of grain, a cloth full of wet blood and a small drinking pot such as are sold at all toddy shops. These circumstances complete the evidence of the prosecution.

The prisoners offer no defence that is at all worth consideration, and their witnesses go rather to prove the murder against them, than to exonerate them from the charge. I convict all these prisoners and would recommend a sentence of imprisonment for life in transportation.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) We observe that the sessions judge,

in giving the grounds upon which he finds the prisoners guilty, states, that they were seen by eleven witnesses (whose names he gives) "drinking together during the evening of Tuesday, and subsequently seated at the *khullean* of Poonae, talking together." This statement is not borne out by the record and can only apply even in part to Poonae. Some of the witnesses deposed to having seen the deceased and the prisoner, Poonae, going together towards the grog-shop, and afterwards sitting talking together at the *khullean* of the latter, but not a single witness said, either that he had seen these two drinking, or that he had seen either of the other prisoners in company with them, near the grog-shop or at the *khullean*. Again, the sessions judge receives, as true, the evidence of Koonjah witness No. 7, Khugput, No. 8, and Choonuk, No. 9, to the recognition of the three prisoners, and their depositing the body in the wheat field, and coupling this evidence with that of the witnesses, who, (as he believed) had spoken to the fact of all the prisoners drinking together, he considers the chain of evidence to be complete. To us, it appears, however, that so much suspicion attaches to the evidence of the witnesses, Nos. 7, 8 and 9, as to preclude the Court from placing any reliance on it. The facts deposed to by these witnesses, are of the utmost consequence, and we cannot believe that, if true, they would not have been communicated, either to the police or to their neighbours the very next day, yet, so far was this from being the case, that the prosecutrix in no way alludes to these persons, when giving a very minute detail on the day following the murder of all the circumstances in which suspicion could, in any way, attach to the prisoners; in fact, we hear nothing of these men till we find them mentioned in the final report of the darogah, drawn up on the 6th day after he had entered upon his enquiry. Evidence, which so directly implicates the prisoners, could only be admitted, if given under circumstances precluding all suspicion. We are compelled, therefore, to reject it; and it only remains for us to deal with such facts and circumstances, as in our judgment afford proof against the prisoner, Poonae. These are, that the deceased was undoubtedly in his company when last seen alive at about 9 o'clock at night, subsequent to the time at which the blanket was given to the prisoner Chummun by witness No. 2, Oogursun, with whom (and not with Sook Lall Pooree as stated by the sessions judge) the deceased had left it, that the body was found the next morning in a mutilated condition in an adjacent wheat-field, and that a cloth, still wet with blood, was found concealed under sheaves of grain in the prisoner's *khullean* by the police on the same day. These circumstances he has failed to explain, or to account for, in any manner, and coupling them with the facts of the deceased, having had an intrigue with his sister and of the peculiar marks

1854.

May 5.

Case of
POONAE and
others.

1854. of mutilation on the body, they afford to our minds, sufficient presumptive proof of the prisoner's participation in the murder: We therefore convict him as an accomplice in the murder, and sentence him to be imprisoned for life in transportation beyond sea.

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Case of
POONAH and
others.

On the grounds, stated above, we acquit the other two prisoners and direct their immediate release.

PRESENT :

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

BABOO RAM,

versus

MUSST. BECHNEE.

Purneah.

1854.

CRIME CHARGED.—Accessory after the fact (in a case of burglary and theft.)

May 6.

Committing Officer.—Mr. G. A. Pepper, officiating magistrate of Purneah.

Case of

MUSST.

BECHNEE.

Tried before Mr. G. Loch, officiating sessions judge of Purneah, on the 1st April, 1854.

Prisoner acquitted. A leading question put to her considered unwarrantable, and her answer to it, rejected as unavailing against her.

Remarks by the officiating sessions judge.—The prosecutor carried on a trade in cloth manufactured up-the-country and took up his dwelling in the house of Bhojulall, in mouzah Mahadebpore. At the commencement of the month of Kartick last, the house was entered and fifty *thans* of cloth, twenty-five rupees cash and two brass vessels were carried off. No trace of the thieves was then obtained. In the month of Poos, a second robbery was committed in the same house, and while the jemadar was making enquiries, a goindah, Gholam Ali, gave information that part of the property was likely to be found in mouzah Kuaila, a village some ten or twelve miles off, and mentioned the names of Nujjuf Ali and others. The jemadar proceeded to Kuaila and received information from Dahoo that Musst. Assoodya, a woman kept by Nujjuf Ali, had concealed some cloth in a rice field and in the adjoining jungle, search was made and the property found. On the next day a woman named Kaparun informed the jemadar that Musst. Bechnee had given her brother Lootf Ali a piece of cloth to conceal. On being apprehended, Lootf Ali stated that Bechnee had told him to bury it as it was stolen property. Bechnee, on being apprehended, admitted that she had given the cloth to Lootf Ali to conceal, that it had been purchased by her son Dhunnah from Nujjuf Ali, who when the jemadar arrived to make enquiries, told her to conceal it as it

was stolen property. Dhunnah on being apprehended produced two other pieces of cloth purchased from Nujjuf Ali, which he had buried on the jemadar's arrival, being also warned by Nujjuf Ali that the property was stolen. All the cloth, being of a peculiar texture, was recognized by the plaintiff. Nujjuf Ali denied having sold the cloth to Dhunnah, or of having told him or his mother that it was stolen property. As there was no evidence against him beyond the statement of these two prisoners, he has been acquitted. Dhunnah and Lootf Ali have been sentenced to a year's imprisonment with labor and irons, and the present reference is submitted as regard the prisoner Musst. Bechnee whom the law officer has acquitted, but in whose opinion I do not concur. There are no grounds for doubting the truth of the statement made by her to the police jemadar, that Nujjuf Ali had told her that was stolen, and that she gave it to Lootf Ali to bury. It is true that before the magistrate she denied the charge, but on being questioned she admitted that Dhunnah had purchased a cloth from Nujjuf which he had given her, and that she had given it to Lootf Ali to conceal, when she learnt from Nujjuf Ali that it was stolen property. The law officer objects to the manner in which these questions were put, but though the manner of asking the question is rather objectionable, yet there is no reason to doubt the truth of the statement made by the prisoner which was similar to that made in the mofussil. Should the Court agree with me in considering the prisoner guilty, I beg in consideration of her age and the length of time she has been under trial, as well as the nature of the offence, the result rather of impulse than premeditation, to recommend that a sentence of three months' imprisonment with labor be passed upon her.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A Dick and B. J. Colvin.) The Court concur with the Moofttee. The prisoner, Musst. Bechnee, declared at the foudaree, that on hearing that the cloth was stolen property, she gave it to Lootf to give to the jemadar. The question by the magistrate, "Why did you, knowing the property to be stolen, give it to Lootf to keep and to conceal?" was unwarrantable after the above declaration of the accused. We therefore, acquit her, and direct her release.

1854.

May 6.

Case of
Musst.
BECHNEE.

PRESENT :

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND ABDPOOL WAHED ALIAS EDUN THAKOOR,

versus

SHEIKH GOLAMEE (No. 4.) AND SHURIETULLAH (No. 5.)

Dacca.

1854.

May 6.

Case of
SHEIKH Go-
LAMER and
another.

The sentence
of lower court
affirmed on re-
jection of ap-
peal.

CRIME CHARGED.—1st count, burglary in the house of Abdool Wahed alias Edun Thakoor prosecutor, and theft of property to the value of Rs. 376-4; 2nd count, receiving and possessing portions of the property, knowing them to have been acquired by the above burglary and theft, on the 3rd July, 1853.

CRIME ESTABLISHED.—Being accomplices in a burglary and theft in the prosecutor's house.

Committing Officer.—Mr. W. J. Longmore, joint-magistrate of Furreedpore.

Tried before Mr. C. T. Davidson, commissioner with powers of sessions judge, on the 21st January, 1854.

Remarks by the commissioner.—The prosecutor states that on the night of the 20th of Assar last, his house was broken into and robbed of property to the amount value of Rs. 376-4. Having been informed that the prisoners and three others, whom he names, and who all bear bad characters, had been seen lurking about his premises on the day before the theft, he laid information against them. They were arrested and part of the property recovered from them, evidence to the fact of the burglary having been committed and to the recovery of the property from the prisoners has been taken, and the property has been duly recognized as that of the prosecutor. The prisoners confess both in the mofussil and before the magistrate, and their confessions have been duly attested in this court. The prisoners deny the charge, but have set up no good defence, they recall their confessions and plead compulsion, but the plea is not established by the witnesses called in support of it. The *futwa* of the law officer convicts the prisoners of being accomplices in burglary, and of having stolen property in their possession knowing it to have been so obtained, and in this finding I concur, and have sentenced them to five (5) years' imprisonment each with hard labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) Having read the petition of appeal and examined the proceedings of commitment and trial, we see no reason to interfere with the conviction and sentence.

PRESENT :

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

JADUB CHUNDER DOSS ALIAS JADHOO KANA.

Hooghly.

1854.

May 6.

Case of
JADUB CHUN-
DER DOSS
alias JAD-
HOO KANA.

CRIME CHARGED.—Committing a dacoity in the house of Rameshur Sarnokar at Digrooce, on the night of the 21st February, 1849, in which property to the amount of rupees 126-2 was plundered; 2nd count, having belonged to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity at Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 28th December, 1853.

Remarks by the officiating additional sessions judge.—On 21st February, 1849, a dacoity was committed in the house of a silversmith, by name Rameshur, in the village of Digrooce. Ram Thakur was the leader of the gang and employed one Kartik Kawrah of Calcutta, to get together a body of men from the town. They crossed the river at the Sulkeah ghat, under the agency of Kartik, and proceeded up the road. They halted in a village some distance off, and there met Ram Thakur and his party. After night fall, the gang went into the open country, taking some fire with them. They cut bamboos and converted them into spears and clubs. About midnight, they proceeded to the attack, and one of the party, Nobin Kawrah, by scaling the wall, opened the outer gate and admitted the gang, who commenced plundering. The house has an upper story, the floor of which is composed of bamboo and mud. The door leading to it was so securely fastened, from within, that the efforts of the robbers to force it were quite unavailing. At length the idea of perforating the ceiling from below, occurred to Nobin Kawrah, and he at once commenced the process of boring with a pointed bamboo. In time he succeeded, and when the aperture was made sufficient to admit a man, got up through it by being raised on the shoulders of his comrades. He found the master of the house up stairs and began to beat him, to induce him to disclose the hiding-place of his valuables, having first unfastened the door and let in the gang. The work of plunder was here resumed for a while, after which the dacoits decamped. These facts are detailed by the two approvers who gave evidence against the prisoner, whom they represent as having formed part of the attacking gang and taken a share in their proceedings.

Prisoner convicted of dacoity and sentenced to sixteen years' imprisonment in banishment.

Appeal rejected.

1854.

May 6.

Case of
JADUB CHUN-
DER DOSS
alias JAD-
HOO KANA.

The owner of the house and his brother, who resides in the same enclosure, depose to the occurrence of the dacoity and prove the fact. The prisoner makes a frivolous defence, imputing his arrest and accusation to an approver of the name Kisto, from malicious motives. He maintains that he possesses the means of earning an honest livelihood, but calls no witnesses to prove the plea. The dacoity charged was committed upwards of four years ago, and the attending circumstances as above described, invest it with a specialty which makes it impossible to doubt the recital originally made in regard to it. The statements were recorded two years before the arrest of the prisoner, and made by distinct parties under circumstances which preclude all suspicion of collusion between them. They directly implicate the prisoner and I regard them as conclusively establishing his guilt on the first count of the indictment.

Sentence passed by the lower court.—To be imprisoned with labor and irons for fourteen years in banishment, and two years more in lieu of corporal punishment, in all sixteen (16) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court reject the appeal and affirm the sentence passed upon the prisoner. There are strongly corroborative circumstances of the truth of Sindoo Mytee's evidence to be found in connection with this case, in the report of Sindoo Mytee's own trial at page 982, of the Nizamut Reports for 1851, and the prisoner was named by both the approvers fifteen months before his apprehension.

Additional remarks by Mr. Dick.—The prisoner in his petition of appeal has stated, that on his apprehension in Sawun 1259, (July, 1852,) he denied his guilt, and was then placed in *hajut* or prison, as under trial, and was not brought up for trial till eighteen months afterwards; and on reference to the record it appears, that prisoner was apprehended in July the 8th, 1852, and was not committed for trial till 21st October, 1853. The sessions judge will be pleased to ascertain the cause* of this delay of more than fifteen months, in which the accused was kept in suspense.

The Court further request that in these cases, where the evidence of guilt rests solely on the confession of approvers, the first statements of the approvers immediately after their apprehension, be filed with the subsequent confessions and depositions of the approvers, on which the charge is grounded; with their respective dates affixed.

* From the explanation submitted it appeared, that the prisoner had been under a paralytic affection in jail for above twelve months.

PRESENT :

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

KHATIR DHOWAH (No. 5.) NOYAN MOOCHEE (No. 6.)
AND MODHOO SHONEE GAWALLA (No. 11.)

Hooghly.

CRIME CHARGED.—1st count, dacoity in the house of Ramdhun Mookerjea; 2nd count, having belonged to a gang of dacoits.

1854.

May 8.

Committing Officer.—Baboo Chunder Sekur Roy, deputy magistrate under the commissioner for the suppression of dacoity.

Case of

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 21st April, 1854.

KHATIR DHOWAH and others.

Remarks by the officiating additional sessions judge.—The prisoners were committed by the deputy magistrate, under the commissioner for the suppression of dacoity, and are charged firstly with dacoity and secondly with having belonged to a gang of dacoits. They plead *not guilty* to the indictment.

Three prisoners convicted of dacoity and of having belonged to a gang of dacoits sentenced to transportation for life.

The witnesses marginally* noticed are approvers on the establishment of the dacoity commissioner,

* Witnesses Nos. 1, 2 & 3.

and prove the charge against the prisoners.

They detail the particulars of the dacoity committed in the house of Ramdhun Mookerjea of Niamutpore, on the night of the 7th of June, 1851, showing the prisoners' complicity therein, and mention several other instances in which they took part in dacoities committed at different times and in different places. The party indicated in the

† Witness No. 3, of Calendar No. 3.

the margin† will also be found to bear testimony to the latter particular.

‡ Witnesses Nos. 4 and 5.

The witnesses mentioned in the margin‡ prove the fact of the dacoity charged.

The prisoners deny the charge and impute malicious and vindictive motives to the approvers in giving evidence against them. They call witnesses to character, but the testimony does not avail them.

The approvers' evidence convicts the prisoners of both counts of the charge, and that evidence is supported by the detailed confessions made by the witnesses, when first apprehended and charged. These confessions are verified by the records of the several magistrates, in whose districts the admitted dacoities took place, and shown to have been recorded under circumstances which precluded all possibility of collusion between the confes-

1854. saries. The proof against the prisoners therefore is complete, and I would recommend that they be sentenced to transportation for life.
- May 8. *Remarks by the Nizamut Adawlut.*—(Present: Messrs. A. Dick and B. J. Colvin.) We find, after a careful comparison of the several records before us, that the prisoner Khatir Dhowa, was first named by the approver, Moodoo Moochee, (as one of the dacoits in Ramdhun's case,) in his confession of October, 1852, which seems to have caused his apprehension in January, 1853. In November, 1853, he was named by Bindrabun as concerned in Ramdhun's case, and also in Tara Kusbee's case: and on referring to the record in Tara's case, we find he was named by one of the confessing persons charged in the case, and was apprehended, though afterwards released by the magistrate. In March 1854, he was named by Moodoo Chung as concerned in Tara's case; lastly, in October, 1853, we find him named as concerned in two other cases by the approver Neemae Nikaree.
- Noyan Moochee was named by Moodoo Moochee before his apprehension, as concerned in Ramdhun's case; and then by Bindrabun as concerned in Ramdhun's case and also in Baynee Chuttoorjea's case, in which Moodoo Chung also mentioned him: and Neemae Nikaree names him in a Tamoollee's case.
- Moodoo Shoonnee is named as concerned in Ramdhun's case by Moodoo Moochee and Bindrabun, and by Bindrabun and Moodoo Chung as concerned in Tara's case, and was afterwards apprehended. We therefore convict all three prisoners of the crimes with which they are charged, and sentence them to transportation for life.

PRESENT:

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

KUSSIMUDDEEN SHEIKH AND GOVERNMENT,

Hooghly.

versus

KUNGALÉE BAGDEE.

1854.

CRIME CHARGED.—Dacoity on the 27th January, 1854, in the house of Toribut Sirkar and plundering property to the value of rupees 254-7-0.

May 10.
Case of
KUNGALÉE
BAGDEE.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly. Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 18th March, 1854.

Simple recognition clear and distinct, by several witnesses, and *Remarks by the officiating sessions judge.*—This trial was conducted in accordance with Act 24 of 1843. The prisoner pleaded *not guilty*.

The prosecutors uncle's house, in which he also resides, was attacked by a band of twenty to twenty-five dacoits, on the night of the 27th January, 1854, corresponding with 15th Maugh, 1260, and plundered of property, consisting of ornaments, domestic utensils, &c., valued at rupees 254-7-0. Upon hearing the noise, caused by the dacoits, the prosecutor fled by a back door and consequently recognized no one.

The witness, No. 1, who is a chowkeedar of the village, hearing the noise, and having seen that a dacoity was being committed, gave the alarm, and assembling the neighbouring chowkeedars and villagers, proceeded to the spot and saw the dacoits, whom they pursued for some way.

The witnesses, Nos. 1, 2, 3, 4, 5 and 7, recognized the prisoner standing with another person keeping watch at the door while the dacoity was going on, they followed the dacoits upon their departure, when one of the villagers, witness No. 6, was slightly wounded by one of them, and he points out the prisoner as the person who struck him.

The prisoner, who is chowkeedar of a village, about a *cosse* and a half from the scene of this dacoity, pleaded an *alibi*, that he was at his post upon the night of the 15th Maugh, to which his witnesses, three villagers and two brother chowkeedars, bear testimony.

The charge is, in my opinion, clearly proved against the prisoner by the evidence of the seven eye-witnesses, who recognized him during the commission of the dacoity and immediately afterwards, and it is most improbable that they could have been mistaken in his identity, he being a neighbouring chowkeedar, with whom they must have been well acquainted. I convict him of the charge, and sentence to imprisonment for seven years, and two years in addition in lieu of corporal punishment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) This is a case of conviction on recognition only. The recognition of the prisoner is clear and distinct, by several persons, who all agree in the most material points concerning it. The recognition was declared *at once* by the witnesses: and the most important point in the defence of the prisoner, was not mentioned by him in his answer before the magistrate; where the truth of it could have been readily tested. The prisoner's witnesses do certainly testify to his having been at his post, as village chowkeedar, on the night of the dacoity. The distance however of prisoner's village is not more than one or one and a half *cosse* from prosecutor's village, therefore he might easily have gone his rounds, save when actually engaged in the dacoity. We, therefore, see no reason for interference with the conviction and sentence passed on the prisoner.

1854.

May 10.

Case of
KUNGALKE
BAGDER.

immediately
declared after
the occurrence
of the offences;
considered suf-
ficient for con-
viction in the
absence of any
defence strong
enough to
shake its cre-
dibility.

PRESENT :

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT AND ANOTHER,

*versus*NUCKCHED DOSADH, (No. 1, APPELLANT) MANORAT
DOSADH, (No. 2, APPELLANT) MOOLCHAND DOSADH.
(No. 3.)

Sarun.

1854.

May 12.

Case of
NUCKCHED
DOSADH and
another.CRIME CHARGED.—1st count, highway robbery; 2nd count,
theft of cloth, valued at fourteen annas.

CRIME ESTABLISHED.—Highway robbery.

Committing Officer.—Mr. R. J. Richardson, magistrate of
Sarun.Tried before Mr. H. Atherton, officiating sessions judge of
Sarun, on the 28th March, 1854.

Three prisoners convicted of highway robbery sentenced by the sessions judge to various terms of imprisonment. Appeal rejected.

Remarks by the officiating sessions judge.—This is a case of simple highway robbery. Tohul, the complainant, a resident of the Shahabad district, was proceeding towards his home from the Purneah district, to which he had been to dispose of blankets, and from which he had taken the precaution of remitting the proceeds of his sale by *hoondee*, when, on the 12th February, 1854, about three o'clock in the afternoon, as he was journeying along the high road, crossing the Mohiwan Chour, within the Chuprah thannah jurisdiction, he met the three defendants coming from the opposite direction, and who just as they had passed him turned round and seized him by the throat. His cries were heard by the witnesses, Nos. 1, 2 and 3, who were close at hand, grazing their cattle and who instantly ran to his assistance, and seized on the spot defendants, Nos. 1 and 2, the other whom they recognized escaping with a cloth, a woman's *dhoty*, which the plaintiff had over his shoulders. The defendants seized, were at once taken towards Mohiwan, near which the robbery took place, and delivered over to witnesses, Nos. 4 and 5, who hearing an outcry went out and found the prisoners in the hands of their captors. Witnesses, Nos. 4 and 5, with the plaintiff and defendants, Nos. 1 and 2, proceeded the same afternoon to the thannah, and the investigation being entered and the defendant No. 3, was apprehended on the 14th. In defence defendant, No. 1, Nuckched, says that he went to Mohiwan and at a drinking-place met plaintiff and the witnesses, and that he got drunk and cannot tell why he was seized; Manorat, defendant No. 2, says that when on his way to Sahebgunge bazar, he found at Mohiwan witnesses beating Nuckched No. 1, and that on his forbidding them, he was himself beaten, and that at the thannah, to which he went to complain, a bribe was

demanding of him and he was made a defendant. Neither defendant Nos. 1 or 2, have any evidence in support of their defence. Moolchand defendant, No. 3, states that he was about a coss off at another village and he produces two witnesses to support his defence, urging also that the witnesses to the prosecution are his enemies and that he surrendered himself, on hearing he was sought by the police. Of the truth of the plaintiff's statement there can, I think, be no doubt. He lost little and had therefore no object in preferring a false charge. The prisoners were instantly recognised by the witnesses, being neighbours and of old known to them, and the name of Moolchand, defendant No. 3, was at once taken. The witnesses state that the prisoners were not drunk when seized, and though it does not appear that the plaintiff was beaten or otherwise ill treated, yet that probably was, because there was no time or need for it. Plaintiff was overpowered instantly, but the crime committed is not the less robbery by open violence. The defendants, it is said, had sticks, and but for the timely aid rendered, might have further ill-used the plaintiff. The Moulvee convicts all the prisoners of highway robbery, and finding the charge proved against all, I sentence Manorat defendant, No. 2, who has been twice previously convicted, once of burglary and theft and sentenced to 5 years' imprisonment, and once of cattle-stealing and sentenced to 3 years' imprisonment, to 14 years' imprisonment in banishment with labor in irons and defendant, No. 1, formerly imprisoned, one year for bad character, and No. 3, to 7 years, imprisonment each in banishment with labor in irons from this date, 28th March 1854. There is such utter insecurity of property from the depredation of people of this class, it so rarely happens that travelers when robbed of property of small amount will complain, that a severe example must, I think, be made in all cases successfully prosecuted. A cloth only was lost in this case, but that was accidental. From the way in which the plaintiff is described as having been handled by the defendants, it is clear they searched for money on his person, and which would have been secured if there had been any on him.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) Prisoners, Nos. 1 and 2, have appealed. We see no reason to interfere with the sentence passed against them by the sessions judge; they were taken *flagrante delicto*, and have been unable to offer any defence. They are moreover old offenders. We reject their appeal.

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May 12.

Case of
NUCKCHED
DOSADH and
another.

PRESENT :

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT,

versus

NOKOUREE MUNDLE.

Rajshahye.

1854.

May 12.

Case of
NOKOUREE
MUNDLE.

CRIME CHARGED.—Wilful murder of Dasee Aurut his wife.

Committing Officer.—Mr. J. C. Dodgson, magistrate of Raj-

shahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 19th April, 1854.

Remarks by the sessions judge.—The reason for this reference

Prisoner whose jealousy was roused by seeing a man leave his house at night, murdered his wife who would not give him any information regarding the matter—sentenced to transportation for life.

is, that I concur with the law officer in considering the prisoner to have been guilty of the murder of his wife, and in such cases the sentence rests with the superior Court.

There is no evidence to the fact—only two confessions. In the first one, made before the police, the prisoner stated he had been at a feast, and when returning to his house saw a man leaving it. On this he first went in, and examined if all his property was right, and finding it was, and suspecting his wife of having an intrigue with some one, he questioned her, but she would not reveal the name of her paramour, he then laid down, and on his wife falling asleep, he seized her by the neck and getting on her chest squeezed her throat till she died. He then went into the verandah, and told his brother what he had seen, and what he had done to his wife. His brother's wife then came and looked after the corpse; and next day his brother, at the suggestion of his uncle, reported that the deceased had died from a snake-bite.

The foudjaree confession, made before the magistrate in the mofussil at Potea, on the 5th of December, is nearly to the same effect, only he does not in this mention lying down till the deceased was asleep before he seized her by the throat. But to a question put to him, he replied, that he killed his wife half a *puhar*, or one hour and half after he saw the man leave the house.

Both these confessions were fully proved to have been voluntarily made, though the prisoner denied making them.

Mr. Craddock, the civil surgeon, who held a *post mortem* examination of the body, deposed the deceased had been strangled, and the hands might have been used to compress the throat. That there was no mark of a snake-bite; and the deceased was a healthy young woman.

I consider on this evidence that the prisoner is fully convicted of the murder of his wife; and allowing the plea, that he put

her to death in a fit of jealousy, on finding her intriguing with another man on the night he committed the act, I beg to recommend, with reference to the sentence of the superior Court (J. Dunbar Esq., Judge,) in the case of Teeluck Chung Takazgeer, recently tried at Pubna, that the prisoner be sentenced to imprisonment in transportation for life.

He is a stupid looking young man, and first seems to have entertained suspicion against his own brother; but that *he* intrigued with the deceased, there is no reason whatever for supposing.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The circumstances of this case are fully detailed in the judge's letter of reference.

There seems no reason to doubt that the prisoner's jealousy was roused by seeing a man leave his house in the night, as he was returning home, and that the refusal of his wife to satisfy him, as to the presence of a stranger at such a time, confirming his suspicions of her chastity, he was led to commit the crime.

This view is borne out by his brother's statement, who apparently became aware of the murder soon after its perpetration. Under these circumstances we agree with the sessions judge in the propriety of the sentence recommended by him, viz. that the prisoner be imprisoned for life in transportation.

PRESENT :

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT AND OTHERS,

versus

KOOBA.

Hazareebaugh.

CRIME CHARGED.—Dacoity and plunder of property valued Rs. 28-2, and wilful murder of Bundeh Ally Khan, brother of Fyzoollah Khan, and wounding severely Jeebun prosecutor with intent to do him some bodily injury.

Committing Officer.—Captain W. H. Oakes, principal assistant Governor-General's agent of Lohardagga division, Hazareebaugh.

Tried before Major J. Hannington, deputy commissioner of Chota Nagpore, Hazareebaugh, on the 18th April, 1854.

Remarks by the deputy commissioner.—The particulars of this case are fully reported in my letter No. 35, dated 13th August last.

The following extract from that report will suffice for explanation here.

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Case of
NOKOUR
MUNDLE.

1854.

May 12.

Case of
KOOBA.

Prisoner convicted as an accomplice in dacoity with murder, and sentenced to transportation for life.

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Case of
Kooba.

"The prosecutor Jeebun states, that he had encamped near a granary in Totee village, and at about 10 P. M. observed two men creeping about. He asked who they were, but got no reply. Prosecutor then roused his companions and had just done so, when suddenly a volley of stones was thrown on them. One struck him on the head and felled him. When down he was struck by some one with a club. The robbers took some brass vessels and made off. It was then found that Bundeh Ally Khan had been wounded and was dying. He breathed a little till after day break, and then died."

The prisoner Kooba was implicated by information obtained during the original enquiry, but he had eluded pursuit until the 13th January last, when being apprehended he made voluntary confession before the police officers, and subsequently repeated the same before the principal assistant.

The Government is prosecutor in this case.

The prisoner pleads *not guilty*.

Witness No. 2, Bukaly, proves the voluntary confession of the prisoner before the police officers.

Witnesses Nos. 4, 5 and 6, Sheikh Bheenuck, Shahel Ally and Bholy, these witnesses prove the voluntary confession of the prisoner before the principal assistant.

These confessions are to the effect, that the prisoner went out with Bhora and Jodha and others to commit a robbery on some grain drovers at Totee village, that while his companions were engaged in the fact, he remained in an adjacent grove, and after awhile, when they returned, he helped to carry off the body.

In his defence the prisoner makes a statement similar to his confessions.

The jury,* whose names and occupations are recorded below, find the prisoner guilty as accessory before and after the fact, to the crime of dacoity with murder.

In this verdict I concur. The confessions of the prisoner form the only direct evidence produced on this trial. But so far as these go, they may very safely be received, and I would therefore convict the prisoner of being accessory to the dacoity with murder, and would recommend that he be sentenced to imprisonment for life with hard labor in irons in transportation.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J Dunbar and H. T. Raikes.) Ten prisoners were tried and convicted by this Court, on the 20th of October, 1853, and the prisoner now before the Court has been tried on the same charges. His confessions before the police and the principal assistant are corroborated by those of other confessing prisoners apprehended

* Lalla Gujraj Singh, Mokhtar.
Lalla Enjory Lall, ditto.

on the first enquiry. We see no reason to doubt the guilt of the prisoner who, as having accompanied the others for the purpose of robbery and shared with them in the plunder, is clearly liable as an accomplice in dacoity with murder. Of this we convict him and sentence him, as recommended by the deputy commissioner, to imprisonment for life with hard labor in irons in transportation.

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May 12.
Case of
KOoba.

PRESENT :

A. DICK, Esq. SIR ROBERT BARLOW, BART., *Judges, and*
B. J. COLVIN, Esq., *Officiating Judge.*

NOTOBUR SIRCAR AND GOVERNMENT,

versus

TRIAL No. 2.

KALA BUNGSHEE BAOREE, (No. 1,) AND GOOROO
CHURN BAOREE, (No. 2.)

TRIAL No. 3.

KALA BUNGSHEE BAOREE, (No. 3,) AND GOOROO
CHURN BAOREE, (No. 4.)

WestBurdwan.

CRIME CHARGED.—*Trial No. 2.*—Burglary in the house of the prosecutor, Notobur Sircar on the night of the 5th August, 1853, and stealing therefrom property to the value of Co.'s Rs. 41-4-6. *Trial No. 3.*—1st count, prisoner No. 3, stealing on the night of the 23rd or 25th June, 1853, from the house of the prosecutor, Notobur Sircar, one "*lotah*," &c. valued at fourteen annas ; 2nd count, knowingly receiving and having in his possession property acquired in the said theft. Prisoner No. 4, stealing on the night of the 23rd or 25th June, 1853, from the house of the prosecutor, Notobur Sircar, one "*lotah*," &c.

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Case of
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SHEE BAOREE
and another.

CRIME ESTABLISHED.—*Trial No. 2.*—Prisoners, Nos. 1 and 2, burglary in the house of the prosecutor, Notobur Sircar, on the night of the 5th August, 1853, and stealing therefrom property to the value of Rs. 41-4-6. *Trial No. 3.*—Prisoners, Nos. 3 and 4, stealing from the house of the prosecutor, Notobur Sircar, on the night of the 23rd or 25th June, 1853, one "*lotah*" &c. valued at fourteen annas.

The prisoners' confessions before the magistrate, which were proved to have been voluntarily made, were held to be conclusive as to their guilt.

Committing Officer.—Mr. F. Tucker, joint-magistrate of Bancoorah.

Tried before Mr. Pierce Taylor, sessions judge of west Burdwan, on the 21st March, 1854.

Remarks by the sessions judge.—*Trial No. 2.*—The offence was committed on the 5th, but the prisoners were not apprehended till the 22nd August, on information received by Khet-

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too Digwar, witness No. 19. The chowkeedars of a village, distant from that in which the prosecutor resides, informed that individual that the prisoners had been absent from home, on the night of the burglary. No property was found, but the prisoners confessed to the darogah, as soon as he reached their village, and apprehended them, and No. 1, pointed out the *sindkattee*, with which the house of prosecutor had been entered, and, also, the house itself, in the presence of the witnesses whose names have been entered in the column of circumstantial evidence. The confessions were repeated before the assistant magistrate, at Mungulpore, nearly in the same terms (as regarded this case,) and all the confessions, as well as the *sooruthal*, were fully and satisfactorily proven. Both prisoners pleaded *not guilty* before the sessions court and said, that they had been beaten by the subordinate police, to make them confess, No. 1, named no witnesses, and No. 2, declined to have those whom he had indicated examined.

The jury (two vakeels) gave a verdict of guilty, in which I concurred, and considering the offence fully and legally proven against both the prisoners, on their own confessions, and the circumstantial evidence, convicted and sentenced them as noted.

Prisoner No. 2, had been previously tried in the Pooroolia district, for burglaries committed in the houses of Adhyt and Gudadhur Manjees, in whose cases a collective sentence of three years' imprisonment, with labor in irons, was awarded against him, on the 29th August, 1845.

Both prisoners confessed a previous theft in the house of prosecutor, for which they were separately tried.

As no notice appeared to have been taken of the alleged absence of Amrit Chowkeedar, witness No. 11, from his beat, on the night of the burglary, by the joint-magistrate, I directed that officer's attention should be directed to the omission.

The *sindkattee* was of course confiscated.

Trial No. 3.—The mofussil confessions of the prisoners, in the preceding case, both acknowledged the theft charged, as having been committed in the prosecutor's house, in the month of Assarh, 1260 B. S. corresponding with June, 1853, but the exact date could not be ascertained. They pointed out a *lotah* and a small oil pot of brass, in a "*Shar Doba*," or dung pit, near the house of a *moochee*, and prisoner, No. 3, took them up, at the instance of No. 4. This occurred in the presence of witnesses named under the proper head in the Calendar, and Baboo Khan burkundaj sent for and examined by me.

There was also evidence that the prosecutor had informed the chowkeedars (witnesses Nos. 7 and 8,) of his loss of a *lotah* and *hooka* bottom, on some date in Assarh, and that they had not informed the darogah, because prosecutor did not then say that the articles had been stolen. The prisoners affirmed that the

oil pot had been stolen, at the same time, from another house, but the proprietor thereof said that it was not his. Prosecutor and his witnesses, however, swore to the *lotah*, which was recognized by old acquaintance and a crack in its side.

The foudjaree confession of the prisoner, No. 3, in the burglary case, omitted mention of the theft of the *lotah*, but his mofussil one, as well as that of prisoner, No. 4, described it in detail, and the omission before the magistrate seemed to have been purposely made. Copies of the confessions in the burglary case, as well as of depositions and other necessary papers, were duly placed with this by the joint-magistrate, and the former were separately proven.

The prisoners pleaded *not guilty* before the sessions court, and their defence, which was similar to that made in the previous trial, was equally unsupported by evidence.

The jury (two vakeels) brought in a verdict of guilty, in which I concurred, and, considering the offence charged fully and legally proven against both the prisoners, by their own confessions and the finding of the property, &c. convicted and sentenced them as noted. As the burglary and theft were distinct offences, committed at different times, I did not pass a consolidated sentence, but kept the warrants separate, merely noting, in each, that the period of imprisonment, inflicted in the case under remark, would commence on lapse of that ordered in the preceding one, viz. on the 21st March, 1858.

The *lotah* was ordered to be restored to the prosecutor, and the oil-pot confiscated.

Sentence passed by the lower court.—*Trial No. 2.*—Prisoners, Nos. 1 and 2, three (3) years' imprisonment each with labor in irons, and one (1) year more in lieu of corporal punishment, total four (4) years' imprisonment. As soon as the above period of imprisonment shall have come to a close, the prisoners herein named, will undergo a separate sentence of two (2) years each in trial No. 3. *Trial No. 3.*—Prisoners, Nos. 3 and 4, one (1) year's imprisonment each with labor in irons and one (1) year more in lieu of corporal punishment, total two (2) years' imprisonment. The above sentence will take effect after the period of imprisonment passed against the prisoners named in case No. 2, shall have expired, viz. from 21st March, 1858.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick, Sir R. Barlow, Baronet and Mr. B. J. Colvin.)

Mr. A. Dick.—I think it morally impossible that a man, who had been three years' imprisoned for theft, would *willingly* confess not only to the burglary in this case, for which he was taken up, but to another case of theft, when there was not a particle of proof against him, and further should declare that he was a burglar by profession, and every now and then committed thefts! The way too in which suspicion was cast upon him

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and his associates, is very suspicious. A Digwar (lowest grade of police officer) has given to him a list of the property stolen by the burglars, and he is told by the darogah to go and find out the delinquents. He comes to a village distant from the scene of burglary, and three or four chowkeedars of the village tell him that prisoner No. 2, is a released prisoner and a bad character, and name several of his associates, who with him were absent from their homes on the night of the burglary. Now that occurred seventeen nights before, and there is not a word as to how they remembered that fact, no intimation having been given to the thannah of it. Not an item of property in the burglary case is recovered, and there is not a particle of proof to corroborate the confessions. With respect to the giving up of a *lotah* and a vessel for holding oil by prisoner No. 1, the Digwar has told two tales *totally* different from each other.

I think it therefore violently improbable, that the confessions were *voluntary*, and they were denied at the sessions. I believe they were repeated before the magistrate under dread of threats uttered in the mofussil, I would reject them, and acquit the prisoners. Cases like this, in which no property is recovered, are most unsatisfactory and not at all creditable to the police.

Mr. B. J. Colvin.—I do not concur in this acquittal. The prisoners, both before the sessions judge and in their petition of appeal to this Court, acknowledge that they confessed in the mofussil and before the magistrate. It is true that they told the sessions judge that their confessions had been extorted by the police, and that what they stated before the magistrate was under the influence of dread of the police. Their petition of appeal is to the same effect, except that it contains a much more exaggerated account of violence practised by the police. I am however disposed to regard those confessions as genuine acknowledgments of guilt, they are full, detailed and circumstantial to a degree which would not have been the case, had they not been reciting what had actually occurred; nor do I think that there is any thing so improbable in the way in which suspicion first rested upon them, as to throw discredited upon the prosecution. There is no doubt of the occurrence of the burglary (case No. 2,) and of the theft (case No. 3). Instructions had been sent to trace out the perpetrators of the former, and on making inquiries, the Digwar learned the particulars which led to the apprehension of the prisoners. In the investigation which followed, the *lotah*, the theft of which is charged in case No. 3, was proved. I would therefore convict the prisoners, on their own confessions in case No. 2, and on the finding of the property pointed out by them, of the theft which is acknowledged by Goorochurn, in case No. 3. He is an old offender and I think his story, of how he was induced to confess, is just such as one conversant with the ways of a jail would concoct.

Sir R. Barlow.—The circumstances under which the prisoners were apprehended are certainly not satisfactory, and if they had not confessed before the magistrate, no conviction could have taken place.

There are, however, the mofussil confessions and those before the magistrate, attested by respectable witnesses, who swore to their signatures and to the purport of the prisoners' admission, which are recorded in detail. In the sessions court the prisoners plead intimidation, but cite no witnesses in their defence. If the evidence, arising out of confessions voluntarily made before the magistrate and supported by subscribing witnesses, is to be discredited and rejected, upon what evidence are the courts to rely, and what is to be considered good and valid evidence? I concur with Mr. Colvin.

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PRESENT:

A. DICK, Esq. *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND OTHERS,

versus

SYED MAHOMED JUMALUNLYE (No. 9,) SHEIKH KANTOO RAUJ (No. 10,) ENAKHAN (No. 11,) SHEIKH MUHABOULLAH (No. 12,) SHEIKH JAHABUKSHI (No. 13,) SHEIKH KABEEOULLAH (No. 14,) SHEIKH MOOSTEE BEPARY (No. 15,) SOOKOOR MAHOMED (No. 16,) DOOLOO MEAH ALIAS AYMED HOSSEIN (No. 17,) AND MEER TALLEB ALLY ALIAS DARA MEAH (No. 18.)

Dacca.

1854.

CRIME CHARGED.—Prisoner No. 9; 1st count, proceeding with a body of armed men at night to the house of Sheikh Golaum Nubee, and himself firing a loaded carbine, or some other fire-arm, at Meer Nowaubjaun, with intent to kill or do him some severe bodily injury and thereby wounding him with shots on several parts of his person; 2nd count, assembling in an armed body and committing dacoity at night in the houses of Golaum Nubee, Elihibuxsh and Buckshun Beebee, and plundering from Golaum Nubee's house property to the value of rupees 811-10-9, and from Buckshun Beebee and Elihibuxsh's house property to the value of rupees 62-3-0 and carrying off by force Musst. Nya Beebee, alias Bengalee Khatoon, and Fecun Beebee and Hingun Beebee (the last two the wives of Golaum Nubee) and his son Sheikh Fyzoo and keeping them in confinement; 3rd count, assembling in an armed body and attacking the houses of the plaintiffs at night and plundering from Golaum Nubee's house property to the value of rupees 811-10-9, and

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Sessions
judges can
award banish-
ment as part of
their sentence.

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from that of Elihibuxsh and Buckshun Beebee property to the value of rupees 62-3-0 and carrying off by force Nya Beebee, alias Bengalee Khatoon, and Fecun Beebee and Hingun Beebee (the last two the wives of Golaum Nubee) and also his child Sheikh Fyzoo and keeping Fecun Beebee and Hingun Beebee and Sheikh Fyzoo in close confinement at different places; 4th count, aiding and abetting in the above crimes; 5th count having in his possession part of the plundered property, knowing it to be such. Prisoners Nos. 10 to 16; 1st count, assembling in an armed body and committing a dacoity at night in the houses of Golaum Nubee, Elihibuxsh and Buckshun Beebee and plundering from Golaum Nubee's house property to the value of rupees 811-10-9 and from Buckshun Beebee and Elihibuxsh's house, property to the value of rupees 62-3-0 and carrying off by force Musst. Nya Beebee, alias Bengalee Khatoon, and Fecun Beebee and Hingun Beebee (the last two the wives of Golaum Nubee) and his son Sheikh Fyzoo; 2nd count, assembling in an armed body and attacking the houses of the plaintiffs at night and plundering from Golaum Nubee's house property to the value of rupees 811-10-9, and from that of Elihibuxsh and Buckshun Beebee property to the value of rupees 62-3-0, and carrying off by force Nya Beebee alias Bengalee Khatoon and Fecun Beebee and Hingun Beebee (the last two the wives of Golaum Nubee) and also his child Sheikh Fyzoo; 3rd count, aiding and abetting in the above crimes. Prisoners Nos. 17 and 18; 1st count, keeping the said Fecun Beebee, Hingun Beebee and Sheikh Fyzoo in close confinement at different places; 2nd count, aiding and abetting in the above crimes.

Committing Officer.—Mr. C. W. Mackillop, magistrate of Dacca.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 18th March, 1854.

Remarks by the sessions judge.—Golaum Nubee and other prosecutors were asleep in their houses, on the night of the 24th Srabun, 7th August, when they were aroused by a band of armed men, who first attacked the house of Golaum Nubee, wounded a *nigahban* named Nowab Jaun, plundered the house of a large amount of property, seized and placed the two wives and child of the owner in boats, then plundered the house of Elihibuxsh of property, and finally retired.

Meer Nowab Jaun the *nigahban* of Golaum Nubee's house,

- * No. 1, Meer Nowab Jaun.
- 5, Emambuxsh.
- 6, Sheikh Hajaree Dewan.
- 8, Bhanoo Chowkeedar.
- 9, Oozur Dewan.
- 10, Ghutoo.
- 11, Sheikh Rowshun.
- 12, Sheikh Calloo.

witnessed the attack on his master's property and was wounded by a carbine fired, as he states, by the leader of the dacoits or plunderers Jumalunlyle (prisoner No. 9.) Several witnesses,* saw the houses plundered and recognized

- * No. 2, Musst. Fecun Beebee.
 „ 3, Musst. Hingun Beebee.
 „ 4, Musst. Bengalee Khatoon alias Nya Beebee.

the prisoners Nos. 9 to 16. The women witnesses* also gave evidence to the attack on the houses, and to they themselves having

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been placed on board the boats and taken, Bengalee Khatoon alias Nya Beebee to Dacca, and the others and child to the house of Dara Meah (prisoner No. 18,) and thence to various houses, till they were finally set free by the interference of the police in the district of Pubna.

Nya Beebee or Bengalee Khatoon was brought straight to Dacca and found with considerable property in the house of Musst. Arman, opposite to another occupied by Jumalunlyle, the person charged as the principal in the outrage committed.

The witness No. 13,† deposed to having taken the women away from Dara Meah's (prisoner No. 18,) house, where, according to their statement, they had been

† No. 13, Doorgah Pershad Manjee.

forcibly detained and the witness No. 14,‡ to having taken the women from the house of Ameer Meah's at Goonee, in Bhadoor.

‡ Ramjoy Manjee.

last, in company with the witness No. 15,§ and Dooloo Meah prisoner (No. 17) and another, and conveyed them to Konhua where

§ Oozeer Khan.

they were released by the police.

|| No. 15, Oozeer Khan.

„ 16, Arjam Khan.

„ 25, Rajoo Chowkeedar.

The statement of the women was further corroborated by the witnesses Nos. 15, 16 and 25.||

The prisoners all declared themselves *not guilty*, pleading *alibis* and enmity of the prosecutors and witnesses. The prisoner No. 18, producing evidence to show he had refused to receive the women, when brought to his house.

The law officer, who sat with me on the trial, convicted the prisoner Jumalunlyle on the 1st and 3rd counts charged, the prisoners Nos. 10 to 16 on the 2nd count charged against them, and the prisoners Nos. 17 and 18 of detaining the women in confinement. He considered the crime not to amount to dacoity.

That an outrage, such as described, was committed on the premises of the prosecutors, appears to be admitted by the prisoners themselves. The only doubt seems to arise out of the former quarrels between the prosecutors and the prisoners, which renders it necessary to scrutinize the evidence, to ascertain whether the prisoners are really the persons who committed the offence. The eye-witnesses speak distinctly to the persons of the prisoners, and as the houses were attacked on the night of the 7th and 8th of August, and the plunderers remained till after day-break on the 8th, I see no reason to doubt, that all the deposing witnesses were well able to recognize the parties. That the bur-

1854. kundazes at the neighbouring *phari* did not interfere, seems

May 17. * No. 12, Sheikh Calloo. no more than an usual practice of the Bengal police, and the witness

Case of No. 12,* explains that by reason of an intervening *jheel*, there were no Hindoo eye-witnesses to the fact. The prisoner Jumalunlyle is a well known turbulent character, he leads a religious party, and all the prisoners are known as his disciples and followers. The women witnesses†

† No. 2, Musst. Fecun Beebee. deposed to having been taken to the houses of several of these, and
 „ 3, Musst. Hingun Beebee.

there forcibly detained. There are several discrepancies in the evidence, but not, in my opinion, material. In the midst of such confusion as prevailed, the women would naturally not accurately mark the time, they say, too, they were taken from the village of Sheikh Shimileer while

‡ No. 14, Ramjoy Manjee. the witness No. 14,‡ says Goo-nee, there being no village Sheik Shimileer. The explanation given by Golaum Nubee, prosecutor, is plausible, viz., that a false name was given to mislead the women. Had the charge been fictitious, it appears to me that there would have been fewer discrepancies. The depositions would have been well considered beforehand, and, if it be true, as Jumalunlyle asserts, that Golaum Nubee took his, the prisoner's, carbine, the prosecutor would, as is the invariable native practice, have produced the weapon in court, as that with which Meer Nowab Jaun had been wounded.

The witness No. 4,§ was brought, or as stated by the prisoner Jumalunlyle, came of her own accord to Dacca, where she was found with a considerable portion of the plundered property in the house of Musst. Arman witness No. 52. This witness lives opposite to Jamalunlyle; the exact nature of her connection with him is not stated, but as she has remained in the house of Jumalunlyle ever since his apprehension, it is an intimate one. It further appears by the evidence of witness

|| No 132, Alban Khan. No. 132,|| that the house in which Nya Beebee was found, had only then been temporarily and recently hired by Arman Beebee.

The property found in the house is recognized by witnesses¶

¶ No 10, Ghutoo. Nos. 10 to 12, 32, 34 to 36, as belonging to the prosecutor, but in the evidence, there are some discrepancies, both between the depositions of the several witnesses, and what each may have said before the magistrate, which, however, may be partly accounted for by the lapse of time, since the depositions were taken in the foudjary. Still even if some of the

11, Sheik Roushun.
 12, Sheik Calloo.
 32, Sheik Allee.
 34, Ram Chunder Mokeem.
 35, Ramjoo Khulefa.
 36, Ramnarain Sha.

articles do not belong to the prosecutor, Golaum Nubec, the greater part undoubtedly does. Some of the cloths are cut from pieces, parts of which are still in the possession of Golaum Nubec

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* No. 34, Ram Chunder Mokeem.

No. 35, Ramjoo Khulefa.

† No. 52, Musst. Arman.

and the evidence of the witnesses*

Nos. 34, and 35 cannot be questioned.

In this court a witness No. 52,†

claimed the property as hers, but this

must injure the defence, from the

evident connection of Musst. Arman with Jumalunlyle and the utter want of any proof of the story put forward by the prisoner that Roopjan brought any of his property to Musst. Arman's

‡ No. 50. Syed Mahomed.

house. An Arab witness No. 50,‡ says

the property produced was found both

in Jumalunlyle and in Musst. Arman's houses. Musst. Arman that it was all in hers. There is a total absence of all evidence,

that Nya Beebec came to Dacca of her own accord, and I can only therefore generally credit the story told by the prosecutor and his witnesses regarding the property.

The *alibi* pleaded by Jumalunlyle deserves little consideration. He may have been ill, but not seriously so on the 24th Srabun

§ No. 48, Munwar Doctor.

(deposition of the witness No. 48,§).

Dr. Grean also, in a letter to the magistrate dated 9th August, declared the illness slight, and though

|| No. 62, Jabar Khan.

„ 63, Sheik Aumeer.

„ 64, Neeamut Khan.

his witnesses|| declare Jumalunlyle was

in Dacca on the evening of Monday,

the distance to Dumorae is not so

great, that he may not have been pre-

sent at the attack on the prosecutor's houses also. The prisoner said he was engaged about that time in raising money to purchase a stamp; this is false, as he claims 3 Rs. found in Musst. Arman's house as his own.

The story rather to be implied from his answer and the questions put to the witnesses by Jumalunlyle, than actually put forward by him as a plea, regarding a marriage between himself and the

¶ No. 4, Musst. Bengalee Khatoon *alias* Nya Beebec.

witness No. 4,¶ and a deed of gift to

him of that witness's property, does

not in my opinion alter the character

of the crime committed. The marriage is only deposed to by a few witnesses, and these generally, disciples of Jumalunlyle, while the ceremony was performed by witness Hameedar Ruhman No. 43, without any record kept. Hameedar Ruhman is not a Kazee, and in a case decided on the 12th August last, was fined as a party concerned in an outrage committed in company with Jumalunlyle.

The law officer would appear to have allowed weight to the marriage and deed of gift, but neither of these were legally proved, nor was it shewn, that Jumalunlyle and the witness

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- May 17. * No. 4. Musst. Bengalee
Case of Khatoon *alias* Nya Beebee.
- SYED MAHO- the attack on the houses and abduction of the women, took
MED JUMA- place in consequence of the claims, real or fictitious, arising
LUNLYLE and out of the alleged marriage, but the attack seems to me to
others, have been dacoity, and if a deed of gift, whether genuine or not,
is to be pleaded in extenuation, every dacoity may be so excused.
- The *alibi* of the other prisoners does not deserve more consideration; some of the depositions are too exact as to dates, and even, if true, the prisoners may still have been present at the
- † No. 90, Karamooddeen. attack on the houses. I cannot believe the story of the
,, 91, Sheik Arodhun. witnesses† Nos. 90 to 93, 95
,, 92, Rajchand Pamanick. and 98, that so many slept in
,, 93, Nubeen ditto. the house of Sheikh Hubcullah
,, 95, Munneerooddeen Chowkeedar. (prisoner No. 14,) and their
,, 98, Sallimooddeen Khalasee.
- exact recollection of the date. The prisoners Sheikh Moostee and Sookor Mohammed (Nos. 15 and 16,) had a case pending before the collector, but there is no evidence, that Golaum Nubee had any interest in that suit, such as could induce him falsely to accuse these parties.
- The prisoner Dooloo Meea said, his witnesses had all gone over to the prosecutor, and Meer Talleb Ally *alias* Dara Meea (prisoner No. 18, produced evidence, that he had refused to receive the women. How the request came to be made before so many witnesses, who had assembled for prayer, one of them admitting he is a disciple of Jumalunlyle and the others denying they are so, seems very suspicious and cannot weigh against the direct evidence of Nos. 13, 15† and other witnesses. It must be considered too, how very easily the religious character assumed by Jumalunlyle would enable him to procure evidence to any point he might desire. What the peculiar tenets he holds may be, I did not ascertain, but he is not a Feraze.
- Beside the trial now reported, the record of thirteen other cases of riot and assault were produced in court. In one of these Elihibuxsh a prosecutor and the witness§ Ghutoo were fined, but the perusal of these records confirms generally the deposition of the witnesses in this case, that Jumalunlyle is a most turbulent character, ready at all times and on little or no provocation to take the law into his own hands. These misls, also, in my opinion, greatly confirm the evidence in the present case. It is true, there have been quarrels, that the parties are at enmity with each other, but such facts admitted, I doubt if a more
- ‡ No. 13, Doorgapersad Manjee.
,, 15, Oozeer Khan.
- § No. 10, Ghutoo.

satisfactory case than the present could have been made out against the prisoners.

The charges laid in the calendar are for crimes very common in this district. I extract from the returns of the last five years the number of cases tried and the number of persons convicted of offences similar to that now reported.

	Cases.	Persons convicted.
1849	775	191
1850	669	271
1851	958	229
1852	389	144
1853	467	354

The last year shows an improvement still scarcely more than one person was convicted in each case, while though there may have been occasional exaggeration 10, 20, and sometimes 100 are said to have been concerned. In the present instance ten are brought to trial, while sixty or seventy are said to have taken part in the attack on the houses.

With so small a chance of the conviction of any number of the offenders, many crimes of this description are probably not reported to the police, and a practice is also prevalent in this district which must tend to keep crime out of the returns. I have called on the magistrate to report how far the practice prevails of keeping cases on a miscellaneous file, until the offenders are apprehended or a warrant issued, and on receipt of his reply, shall address the Court on the subject. For these reasons I much doubt, whether the apparent decrease in crime of this description is real.

The present case is an aggravated one, and the offenders may therefore, I consider, be fairly made an example of, such as shall deter the bands of *lattials*, which infest this district, from assembling for purposes of plunder at the bidding of any influential person. The fact that the women were conveyed from place to place, show the extent of the connection of the gang in this and the neighbouring districts.

Disagreeing with the law officer, I might perhaps have punished most of the prisoners for dacoity, but simple imprisonment would have had little effect in breaking up such a combination as appears to exist. Jumalunlyle is an Arab by birth, a very powerful man and of whom the natives here seem so much in dread, that for his safe custody alone, he should I think be sent to a jail beyond the limits of Bengal, and to break up the connection among his followers, all those concerned in the attack on the houses should I think be banished the district. I would convict Jumalunlyle on the 1st and 2nd counts of the calendar and the prisoners Nos. 10 to 16, on the 1st count, charged against them, and sentence all to fourteen years' imprisonment with labor and in irons in banishment from the district, and

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Case of
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convict the other two prisoners Nos. 17 and 18, on the 1st count charged, sentencing them to seven years' imprisonment with hard labor.

The value of the plundered property not recovered, to be realized by the sale of the prisoners' (Nos. 9 to 16,) effects, under the provisions of Act 16 of 1850.

Resolution of the Nizamut Adawlut.—(Present: Mr. A. Dick,) No. 367, dated the 21st April, 1854.

The Court, having had before them the papers above recorded, connected with the case of Syed Mahomed Jumalunlyle and others, direct that the letter of the sessions judge be returned to him with a request that he will state distinctly his reasons for referring the case. Whether he recommends a sentence heavier than he can adjudge on the conviction of the *futwa*, or whether he differs with the *futwa* as to the crime proved?

The Court observe that all the counts might have been comprehended in the single one of dacoity with wounding and abduction of females, and the additional one of aiding and abetting therein against prisoners Nos. 17 and 18. Then no *futwa* would have been needed or reference requisite. The *futwa*, however, declares, that the offence is not dacoity.

In reply to the above resolution, the following letter No. 293, dated the 2nd May, 1854 was submitted by the sessions judge.

With reference to the Court's resolution No. 367, of 21st ultimo, I have the honor to return my letter No. 214, of 22nd March, in the 21st paragraph of which I have recommended that the greater number of the prisoners convicted be banished the district; I referred the case on the ground that the banishment was a punishment which I had not authority to inflict. Had I considered fourteen years simple imprisonment sufficient, I should have passed such a sentence without reference to the Court, as I think the offence proved is dacoity and could have dispensed with the *futwa*.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We observe that the sessions judge has, as stated by him in his letter No. 293, dated 2nd instant, referred this case on the ground that he had not authority to inflict banishment. In this, he is mistaken, see Clause 3, Section 8, Regulation LIII. of 1803. He should have made the reference on account of the difference of opinion between him and the law officer, as to the crime established against the prisoners. Had he agreed with the law officer, he might have passed sentence under Clause 7, Section 2, of the above law to the extent of imprisonment for nine years, including two in lieu of corporal punishment; or had the law officer concurred with him as to the crime established being dacoity, he could have sentenced, as proposed by him, adding banishment as a part of the sentence.

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Case of
SYED MANO-
MED JUMA-
LUNLYLE and
others.

The Court, having carefully considered the proceedings, are of opinion that the attack was made upon prosecutors' houses as deposed to by them and their witnesses; that Nowab Jaun was wounded in the course of it, and that the three women and boy were carried off, one of the former being removed to Dacca, and the two others and boy to various parts of the country. Prisoner No. 9, Jumalunlyle was the leader of the party. His defence is very weak and the truth of it is quite negatived by the civil surgeon, and several of his own witnesses who prove that he was not in the weak state of health, in which he professed to be. There is nothing in the evidence for the other prisoners to disprove their participation in the outrage, the actual occurrence of which is in fact corroborated by their answers.

We do not find the plundering of property proved to the extent charged.

* Golam Nubbee on the 8th and 26th August.

Buckshun Beebee and Elihibuxsh on the 10th August.

The prosecutors gave in their lists separately on different dates.*

The search was made on the 10th August, when things not entered by Golam Nubbee in his first list,

were claimed by him. This of course brings some discredit upon his statement regarding the amount of plundered property. The sessions judge will restore to him and to Buckshun Beebee and Elihibuxsh only such articles as are incontestably theirs.

We find the prisoners Nos. 9 to 16, guilty of assembling in an armed body and attacking and plundering at night the houses of the prosecutors, and carrying off by force Nya Beebee alias Bengalee Khatoon and Fecun and Hingun Beebee and the boy Fyzoo, and keeping the three last in close confinement at different places. We also find the first count charged against prisoners Nos. 17 and 18, to be proved against them.

We sentence prisoners Nos. 9 to 16, to imprisonment with labor in irons in banishment for seven years, and prisoners Nos. 17 and 18, to imprisonment with labor in irons for five years.

PRESENT:

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT,

versus

JOYNARAIN BURKUNDAZ.

Dinagapore.

1854.

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Case of

JOYNARAIN
BURKUNDAZ.

The charge
of embezzle-
ment was con-
sidered to be
proved against
the prisoners.

CRIME CHARGED.—1st count, embezzlement of forty-eight rupees from the salary of thannah establishment for the month of September, 1853; 2nd count, theft.

CRIME ESTABLISHED.—Embezzlement of rupees amounting to 48-2-15, from the salary of the thannah establishment for the month of September, 1853.

Committing Officer.—Mr. G. U. Yule, officiating magistrate of Dinagapore.

Tried before Mr. James Grant, sessions judge of Dinagapore on the 2nd March, 1854.

Remarks by the sessions judge.—The prisoner received rupees 144-2-8½, on account of the Thakoorgurwan thannah establishment for September 1853, of which he paid rupees 12, to three burkundazes who had been transferred to the Kotwallce thannah, and rupees 24 to Ramrutton Sircar according to the darogah's *rooka*, authorizing him to pay whatever Ramrutton demanded. He delivered rupees 60-2-8½ at the thannah with the burkundazes' receipt for rupees twelve and the "*rooka*" endorsed by Ramrutton for rupees 72, but the detail was on account of the darogah rupees 71, the muhurir rupees 9, and the jemadar rupees 2, aggregating rupees 82. The actual endorsement is said to have been on account of the darogah rupees 13, the muhurir rupees 9, and the jemadar rupees 2, aggregating rupees 24, and the prisoner is charged with having embezzled or stolen the difference, namely, rupees 48. The case was clearly proved and the prisoner's plea, that the endorsement had been changed after he delivered the *rooka* at the thannah, was in no way supported. The witnesses, produced by him to prove the payment of rupees 72 to Ramrutton, did not account satisfactorily for their being present at the alleged payment and their evidence looked very like that of accomplices, who hoped to save their friend for their future benefit. The *futwa* of the law officer convicted the prisoner of embezzlement, in which I concurred and sentenced him to imprisonment and fine under Acts 13 and 16 of 1850.

Sentence passed by the lower court.—To be imprisoned with labor and irons for seven (7) years, and in addition to the punishment to pay under Act 16 of 1850, a fine of rupees 48 2-15,

the apparent amount of loss, caused to the thannah establishment, having suffered by his wrong, the proceeds of the fine or any part thereof that may be enforced by distress, to be distributed to, or for the benefit of the said thannah establishment in proportion to the loss caused to each.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.)

Mr. A. Dick.—There is much objectionable and unsatisfactory to my mind in the evidence for the prosecution in this case. The darogah in the first place was wrong in giving authority to the prisoner, burkundaz, to pay *whatever* sum his dependant Ramrutton Sircar might require. And the jemadar who took the balance of the thannah pay from the burkundaz, with the receipts for the sums paid away, observed the erasures in the receipt of the sircar, and even got two persons to look at them; yet received the receipt and the balance, and let the burkundaz go away, just as if all had been right. This has been the cause of all the doubt in the case. The magistrate too should have immediately, on receipt of the darogah's first report of the matter, summoned and himself examined the darogah, the sircar, the jemadar and the burkundaz. The subsequent conduct however of the burkundaz, the weakness of his defence, and the totally different and utterly scandalous allegations set forth for the first time in his petition of appeal, go far to corroborate the evidence for the truth of the charge against him. I see, therefore, no reason to interfere with the sentence passed against the prisoner.

Mr. B. J. Colvin.—I concur with Mr. Dick in seeing no reason to interfere with the conviction and sentence in this case. The prisoner received the sum of rupees 144-2-8-11, and only delivered rupees 60 with a receipt for 12 rupees, leaving rupees 72 unaccounted for. This, he said, had been given to Ramrutton Sircar, and in proof he referred to the endorsement of the *rooka*, but there the sum has been evidently altered, and it is proved that Ramrutton only got 24 rupees. Other circumstances are corroborative of his guilt, viz., his story that the darogah wanted gold mohurs, for which a larger sum would be necessary than for *rizzyes* which were what were to be paid for; the circumstance that only the figures relating to the darogah were altered, leaving those relating to the mohurir and jemadar untouched, and the prisoner quitting his post at the thannah and absconding after detection of his guilt.

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Case of
JOYNABAIN
BURKUNDAZ.

PRESENT :

J. DUNBAR AND H. T. RAIKES, Esqs., *Judges.*

FANDOOREE KHASSEENEE,

versus

Sylhet. SEWAJEE COSSIAH (No. 1.) OOTEAK COSSIAH
(No. 2.) AND OOBER COSSIAH (No. 3.)

1854. CRIME CHARGED.—Wilful murder of Oojaun Cossiah, and of
being accessory to the above crime, pulling and throwing the
May 19. corpse into the water by tying a cloth to its neck, and of con-
Case of cealing the fact.

SEWAJEE Committing Officer.—Lieut. G. N. Cave, assistant political
COSSIAH and agent of Cheerapoonjee.

others. Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the
25th April, 1854.

Two prison- *Remarks by the sessions judge.*—This is a case of cowardly and
ers convicted of murder, deliberate murder. The prosecutrix states that on the 5th De-
sentenced to cember, Ooteak Cossiah (prisoner No. 2,) and Ramkhan (wit-
transportation ness No. 1,) called for her husband and took him away to cut
for life; pre- wood, and that as he did not return, she became alarmed, caused
meditation or enquiry to be made for him and discovered his body in a stream
the direct in the jungle.

cause of ma- A
lice not being proved. A
proved. A third prisoner
third prisoner sentenced as
sentenced as into the jungle together, and that he saw Ooteak Cossiah sud-
an accessory to denly strike the deceased a blow with a *dao* which cleft his skull,
14 years' im- and that on his falling, Sewajee (prisoner No. 1,) struck him a
prisonment. second blow which nearly severed his leg from his body; that
Oober Cossiah (prisoner No. 3,) tied a cloth round his neck, and
the three prisoners dragged the body along the ground and
threw it into the stream where it was afterwards pointed out by
him. The transaction was also witnessed by one Oomer Cossiah,
who was cutting wood also near the spot, but neither he nor
Ramkhan were aware of the other's presence. Both witnesses
returned to their village and from fear said nothing about the
occurrence till the enquiry was instituted, when they at once
related what they had seen.

The body was, when it was discovered, much decomposed; but
the witnesses depose to the existence of a deep cut at the back
of the skull, which had evidently caused death, and also to the
leg being severed from the body.

The weapon, with which the murder was committed, has not
been found.

Ooteak Cossiah made a confession before the assistant political
agent to the effect, that the prisoner Sewajee first struck down

the deceased and then compelled him, Ooteak, to strike him also, and that Sewajee then killed the deceased outright by a blow on the head. This confession was proved to have been voluntarily made. The prisoner denied his guilt before this court and pleaded that the other prisoners had made him drunk with wine, so that he knew nothing of the transaction. He called no witnesses.

Sewajee No. 1, stated before the magistrate, that Ooteak had killed the deceased and Oober had helped to drag him to the stream, and before this court he pleaded not guilty.

Oober pleaded guilty to the aiding the other prisoners to conceal the body, and confirms the correctness of the depositions of the eye-witnesses.

Sewajee and Ooteak are brothers and the witnesses depose to the existence of enmity between them and the deceased, in consequence of the deceased having brought a complaint of exaction against Sewajee in the Cheerrah Court, and the fact is admitted by Sewajee himself. He was also supposed by them to have had dealings with the Evil One, and to have thereby caused the sickness and death of some of the members of the family of the prisoners.

The assessors find Sewajee and Ooteak guilty of wilful murder, and Oober of being an accomplice, and in this verdict I concur, and, seeing no extenuating circumstances, recommend that Ooteak and Sewajee be sentenced to suffer death and that Oober be imprisoned with labor in irons for fourteen years.

The case was committed for trial to this court by the orders of the Sudder Dewanny Adawlut, a copy of which is filed in the case.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) We concur with the assessors and the sessions judge in finding Sewajee and Ooteak guilty of the murder of Oojaun Cossiah, we do not concur however in the conviction of Oober as an accomplice. He is only charged in the calendar as an accessary and as such we find him guilty, both on the evidence of the witnesses and on his own confession. The sessions judge has recommended that the two first named persons should be sentenced capitally, but in the absence of any evidence of premeditation or direct cause of malice, we give the prisoner the benefit of a probability that the murder may have proceeded from causes of a less aggravated nature than those surmised by the sessions judge, and consider it as more in accordance with the practice of this Court, under similar circumstances, to sentence them to imprisonment for life in transportation beyond sea. We accordingly pass that sentence against them, and in accordance with the recommendation of the sessions judge, we sentence Oober to imprisonment for fourteen years with labor in irons.

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Case of
SEWAJEE,
COSSIAH and
others.

PRESENT:

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officialing Judge.*

GOVERNMENT AND OTHERS,

versus

Bhaugulpore.

MUSST. NUNKEE.

1854. CRIME CHARGED.—1st count, wilful murder of Gurboo Chokra deceased; 2nd count, culpable homicide of Gurboo Chokra deceased.

May 19.

Case of Committing Officer.—Mr. W. Tucker, magistrate of Bhaugulpore.

MUSST. NUNKEE. Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 18th April, 1854.

Prisoner convicted of child-murder from enmity to child's parents, on violent presumption, and sentenced to imprisonment for life; village officers whose duty it is to report the occurrence of crimes, need not of necessity be committed as accessaries for not reporting, as they can be punished by the magistrate for neglect.

Remarks by the sessions judge.—Prisoner pleads *not guilty*.

The prisoner and prosecutrix, both young women, are related through their husbands, their houses are about a *russee* apart. It seems that a few days prior to this occurrence, prisoner's goat had trespassed on prosecutrix's grain, and a quarrel ensued between them. On the day in question, prosecutrix went out as usual to field labor, leaving deceased, a boy about two years old, in charge of her two girls of about five and eight years of age; on returning home at noon Gurboo was missing, she searched every where but could find no traces of him, and the little girls could give no account of what might have become of him beyond supposing that he had strayed away. It was not till the next morning very early that witnesses Nos. 2 and 3, saw prisoner go out of her house with a child in her arms and throw it down under a tree near at hand, they then took witness No. 4, with them to the spot and found the dead body of the lost child scored over with some sharp instrument, it was given to its mother and afterwards burnt on the same day. Witness No. 1, deposes to having heard the circumstances, and as the chowkeedar of the place, Bhudye (witness No. 4,) had not given notice at the thannah, that he went and informed the darogah of Tegra of them; this accounts for their being no inquest and for the prisoner not being apprehended till the 6th day after the occurrence.

At the thannah the prisoner confessed to having brought the child to her house in her arms, and that on its not coming willingly, that she struck it with her hand *on its face*, unintentionally, and killed it, and, being frightened, hid it under some *bhoosee*, and next morning first scoring it over with a *nukurnee*, (a sort of lancet) in order that it might appear that dogs or jackals had killed it, took it out and threw it under a tree. This confession was not attested before the magistrate nor before this

court; the witnesses named in the calendar not being in attendance, the Nazir reports that they were summoned but have not been sent in.

Before the magistrate she confessed that she had the child in her arms, and because it wished to leave her struck it *on the back* and killed it, as also that she scored it over with the lancet to make it appear as if dogs or jackals had killed it. This confession is duly attested by witnesses Nos. 9 and 10.

The prisoner before this court repudiates her former confessions and tells an improbable story, about meeting prosecutrix when looking for her child, and telling her to search for it, on which she fixed the blame upon her (prisoner) and charged her with the crime, which she altogether denies.

The jury bring in a verdict of guilty on the second count of the indictment, from which finding I differ, believing the crime established to amount to wilful murder.

The confession of the prisoner before the magistrate, fully at-

* By witnesses Nos. 9 and 10. tested before this court,* and corroborated by the evidence of witnesses Nos. 2, 3 and 4, proves sufficiently that the child was killed by a blow *intentionally* inflicted by prisoner, that the body was concealed by her during a day and night, then marked so as to avert suspicion from herself, and finally carried out by her and thrown under a tree. The only point on which the slightest doubt exists is the criminal intention with which the blow was struck: the recently excited enmity between prisoner and prosecutrix leaves an impression unfavorable to the prisoner, but in the absence of any direct proof and considering the tender age of the child, when a slight blow might easily destroy life, I would remit capital punishment and sentence the prisoner to imprisonment for life with labor suited to her sex.

It appears to me that Bhudye chowkeedar, witness No. 4, should be punished for concealment of the crime, but the magistrate takes no notice of his conduct. The magistrate has tried one Pureag Singh Gomashta of the zemindar, on a charge of "neglect to report the death of the child" and convicted him of "concealment of crime," sentencing to six months' imprisonment with 20 Rupees fine in lieu of labor. This is an irregularity requiring notice; the magistrate should have committed both Pureag and Bhudye to the sessions on charge of concealment of the crime in question. The evidence of Bhudye was not at all necessary to the prosecution.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court, advertng to the circumstances of the case, the previous quarrel between prosecutrix and prisoner, the concealment of the body and the marking of it, so as to avert suspicion of murder by the prisoner, convict her of murder on violent presumption and sentence her, as recommend-

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Case of
Musst. Nun-
kee.

1854. ed by the sessions judge to imprisonment for life with labor suited to her sex.

May 19. The Court observe, with respect to the concluding remarks of the sessions judge, that it was not absolutely necessary to commit the gomashtha and chowkeedar to the sessions, to be tried for concealment of the crime. They were guilty of neglect of a special duty and were punishable accordingly by the magistrate himself.

Case of
Musst. Nun-
kee.

PRESENT :

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND GUNGADHUR DOSS BYRAGEE,

versus

HEERA MOCHEE CHOWKEEDAR DAGGEE (No. 1.)
GOBURDHUN MOCHEE (No. 2.) NUND MOCHEE
(No. 3.) AND SOOFUL MOCHEE (No. 6.)

Beerbhoom.

1854. CRIME CHARGED.—Dacoity attended with slight wounding committed in the house of Gungadhur plaintiff, from whence property valued at Rs. 138-10 was plundered.

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CRIME ESTABLISHED.—The same as crime charged.
Case of HEERA Mo-Committing Officer.—Mr. H. Rose, officiating magistrate of
CHEE and Beerbhoom.
others.

Tried before Mr. W. T. Taylor, officiating sessions judge of Beerbhoom, on the 3rd March, 1854.
The evidence for the recognition of two of the prisoners only was held to be good, their conviction was accordingly affirmed.
Remarks by the officiating sessions judge.—The six prisoners in the calendar, No. 1, Heera Mochee, No. 2, Goburdhun Mochee, No. 3, Nund Mochee, No. 4, Mohun Mochee, No. 5, Koila Mochee and No. 6, Sooful Mochee, were committed to take their trial by the acting magistrate of Beerbhoom, for a dacoity in the house of one Gungadhur Doss merchant and shop-keeper. The whole of the prisoners are said to have confessed to the charge before the police, in the mofussil, and to the committing magistrate.

They pleaded *not guilty* when tried in this court. The evidence against only four, Nos. 1, 2, 3 and 6, is conclusive, they being recognized at the time by the plaintiff and witness No. 1. The evidence against the other two is insufficient to convict them. The defence of the prisoners in this court was in each instance an *alibi* in which Nos. 1, 2, 3 and 6, signally failed.

The court remarks that the features of this case are in a measure different from a dacoity in its common interpretation, as it would appear, from circumstances brought before it, that a rival

mahajun had instigated the parties to attack the house and premises of plaintiff at the dead of night, more with a view of annoyance than for actual plunder. The prisoner No. 1, Heera Mochee chowkeedar to be imprisoned six years with chains and labor, and thirty *bait* in lieu of which one year extra. Prisoners No. 2, Goburdhun Mochee, No. 3, Nund Mochee, and No. 6, Sooful Mochee to be imprisoned each for the term of five years with labor and chains.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The evidence in this case is only recognition by the prosecutor and witnesses, Nos. 1 and 2, corroborated by the confession of Goburdhun before the magistrate, to the extent that he was present when the dacoity was planned, although he did not engage in it. We think the evidence sufficient to sustain the conviction of prisoners Nos. 1 and 2, and we accordingly confirm the sentence against them. Nos. 3 and 6, were not named by witnesses Nos. 1 and 2, except by the former on cross-examination. We acquit them and direct their release.

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Case of
HEERA Mo-
CHEE and
others.

PRESENT:

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND ANOTHER,

versus

PRANKISTO SHAH.

Rajshahye.

CRIME CHARGED.—Fraudulently embezzling 2,500 Company's rupees, sent to him for the purpose of buying silk by his employer, Janabee Dassea, whose *gomashta* at that time he was.

Committing Officer.—Mr. J. C. Dodgson, magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 19th April, 1854.

Remarks by the sessions judge.—The reason for this reference is that I differ with the *fatwa*, one of acquittal, and consider the first count of the charge against the prisoner established by most unequivocal evidence.

As stated in the charge, the prisoner seems to have been employed as a *gomashta* to conduct silk and other transactions for Janabee Dassea, and was the son of her late husband's sister.

Ramlall, a servant of the Dassea, deposed that 2,500 rupees had, at the request of the prisoner, been sent to him in the Bengal month of Sawun last, the prisoner representing there was raw silk in the market, and advising his mistress to buy it.

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The prisoner acquitted, the evidence against him being unsatisfactory.

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Witnesses Nos. 4 and 5. deposed that in the month of *Jeyt*, 1258, B. S. the prisoner signed a *kuboolcut*, to which *their* names were subscribed as witnesses, and gave it to the Dassea. He wrote the *kuboolcut* with his own hand, but they (the witnesses) could neither of them read nor write.

Ramlall again deposed, that the exhibit No. 1, was the *kuboolcut* given by the prisoner, who from the end of 1258, B. S. had been in the employ of the Dassea.

Witnesses Nos. 1, 2 and 3. deposed to carrying 2,500 rupees and delivering them to the prisoner, in the month of Sawun, in a house at Rampore, belonging to the Dassea, and the prisoner, after weighing the money, put it into a box and gave them a *rooka* or letter; could not speak to the one produced, as they could not read nor write. All three were Mussulmans, and gave their evidence in a straight-forward manner, and there was not, in my opinion, any reason whatever to suppose they had been suborned or tutored to give evidence.

Ramlall again deposed that the *rooka* (exhibit No. 2, produced) he had received from the Dassea, and the hand-writing was the prisoner's. The witness also gave in a *kattur* to shew that the prisoner had been employed by the Dassea. This is exhibit No. 3, but there is no entry in it of the 2,500 rupees. In fact the prisoner had never given in any accounts of this sum.

The prisoner, when called upon for his defence, gave in a petition, full of abuse of his nephew's wife, and her brother's widow denying he was her *gomashita*, and alleging he was a partner in the trade, or a *bhaggee* with his uncle.

The witnesses to the defence could not however speak to any joint *kattur* in their names, and the majority of them deposed, they knew nothing of his having any share or concern in the trading carried on by the Dassea. All they knew was, that she had turned him out, and one, that he had been her *moktear* to buy silk.

Now this *turning him out*, was evidently because he had forfeited her confidence and would render no accounts; and could not be pleaded, or admitted as a plea, to such a charge.

The *futwa*, it will be seen, rejects the evidence *in toto* for the prosecution, because the witnesses were Mussulmans, a strange reason for a Mahomedan law officer for holding the evidence inadmissible, and, under the circumstances, not warranted in my humble opinion, and as nine-tenths of the inhabitants of this district are Mussulmans, if every case brought by a Hindu was dismissed on this ground, or because the complaint was supported by the evidence of witnesses of the Mahomedan persuasion, the courts would soon be deserted, and the *moulvee's* services be dispensed with.

In such cases, I consider the evidence that would support a claim for a refund of the amount embezzled, in a civil suit, would

be sufficient to sustain a criminal conviction, and on the evidence adduced, I should not have hesitated a moment in giving the plaintiff a decree.

Should the Court concur with me, that the evidence establishes the charge, I beg to recommend that the prisoner be convicted on the first count, (the second has not I find been entered in the English calendar,) and be sentenced to two years' imprisonment with labor, commutable on the payment of a fine of 100 rupees in one month, from the date of the Court's order being communicated to the prisoner.

In case the Court would wish to see it, I have forwarded another *nuthee*, relating to a complaint lodged by the Chowkeedar at the thannah against the widow of Janabee Dassea's brother, that she was *en ciente*, and had attempted to procure an abortion, but which turned out to be false; and the law officer's assumption, that on account of this complaint, the Dassea had complained against him, I consider a mere assumption, and had she done so, the prisoner would doubtless have stated it, or urged it, as proving the charge against him to be malicious; but this he did not do in the foudarry, and only in his defence in this court for the first time.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court, are of opinion, that the evidence for the prosecution is too defective to sustain the charge against the prisoner. The prosecutor, Ram Lal Sircar, in his petition, charged the prisoner with having absconded with the money: whereas the prisoner was found at his usual place of residence, Rampore. The documentary evidence to establish the charge of embezzlement: are first a *kubooleut* or counter-engagement, alleged to have been given by the prisoner. To prove it, three peasants are brought, neither of whom can read nor write, and the deed is said to have been written by the prisoner himself; yet the Dassea is declared to carry on mercantile business to the extent of 20 and 25,000 Co.'s Rs. It is extraordinary, that she had no dependants of her own who could have drawn out and written the deed and attested it! 2nd a receipt or *rooka*, for the delivery of the money, 2,500 Rs. embezzled, is proved by three persons only, neither of whom can read nor write, nor can they identify the receipt (*rooka*) given by prisoner for the money; 3rd a *khata* or book of accounts is certainly filed, but merely to prove the hand writing of the prisoner. No *khata* is produced to shew a due entry of the 2,500 Rs. advanced to prisoner for the purchase of silk. We therefore acquit the prisoner, the proof adduced against him being unsatisfactory, and order his release.

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Case of .
PRANKISTO
SHAH.

PRESENT :

J. DUNBAR AND H. T. RAIKES, Esqs., *Judges.*

KANDOORA MUNDLE AND GOVERNMENT,

versus

GOBIND MANJEE (No. 1.) BHEKA NUSHO (No. 2.)
 RAMSUNKER TANTY (No. 3.) MUDDON JOGY (No. 4.)
 RAJMOHUN KOORY (No. 5.) AND CHEDAM KOORY
 (No. 6.)

Dinagpore.

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Case of
 GOBIND
 MANJEE and
 others.

Prisoners of
 convicted of
 dacoity and of
 having the
 plundered prop-
 erty in their
 possession, sen-
 tenced to seven
 years' impri-
 sonment by
 the sessions
 judge. Appeal
 rejected.

CRIME CHARGED.—1st count, dacoity; 2nd count, having possession of plundered property obtained by dacoity knowing it to be such.

CRIME ESTABLISHED.—Nos. 1 to 3, of dacoity and Nos. 4 to 6, of having possession of plundered property obtained by dacoity knowing it to be such.

Committing Officer.—Mr. G. U. Yule, officiating magistrate of Dinagpore.

Tried before Mr. James Grant, sessions judge of Dinagpore, on the 13th March, 1854.

Remarks by the sessions judge.—This case was tried under Act 24, of 1843.

On the 8th of December, 1853, the prosecutor's house was attacked by some twenty dacoits, who carried off plundered property, cash, ornaments, cloths, &c. valued at Rs. 387-4, of which Rs. 33-4-9 worth was recovered.

The prosecutor recognised the prisoners Gobind Manjee, No. 1, Ramsunker Tanty No. 3, and Dulloo (released) and thought he knew the voices of three other men.

Nos. 1 and 3, when apprehended named Nos. 2, 4, 5 and 6, as their accomplices. The prisoners Nos. 1, 2, 3, 4 and 5, confessed in the mofussil and Nos. 1, 2 and 3, did so before the magistrate, also plundered property was produced by all the prisoners. Two of them Nos. 1 and 2, in respect to their mofussil and foudary confessions, plead that they were beaten and dragged, and the other (No. 3,) beating, and that his answer before the magistrate was written by the thannah mohurrir. The prisoner No. 4, pleads beating, as to his mofussil confession and of the property then produced by him as plundered, he now claims 8 Rs. as his own, the price of a boat sold by him and asserts that an informer gave him the gold and silver ornaments, and requested him to say that he had received them from the prisoner Gobind Manjee No. 21. The prisoner No. 5, also pleads mofussil beating, but denies the confession and the property having been produced by him. The prisoner No. 6, pleads beating in the mofussil though he did not confess, and claims the property (gold and silver ornaments) found in his house as his own.

Maungun prisoner, admitted as a witness by the acting magistrate, absconded before the trial. I see no reason to doubt the prosecutor's recognition of the dacoits, or the evidence of the witnesses to the confessions and to the identity of the property produced by the prisoners.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) We observe that property has been traced to the possession of each of the prisoners, which strongly supports the more direct evidence against them; the witnesses, moreover, cited by the prisoners, have not substantiated the pleas set up in defence by them.

We see no reason to interfere with the sessions judge's order, and reject the appeal.

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Case of
GOBIND

MANJEE and
others.

PRESENT :

H. T. RAIKES, Esq., *Judge, and*

B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT, RAMDIAL RAWOOT AND OTHERS,

versus

DEONATH RAE (No. 2,) KONEE RAE (No. 3,) TOKUN RAE (No. 4,) BHEKNARAIN RAE (No. 5,) HYBURN RAE (No. 6,) SEERAM RAE (No. 7,) JUGROOP RAE (No. 8,) AND INDURJEET RAE (No. 9.)

Tirhoot.

CRIME CHARGED.—Riot attended with the wilful murder of six persons, named Mohee Jollaha, Beekao, Nakchade, Mohung-goo, Goordial, and Bonk Mooneeah, deceased.

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Committing Officer.—Mr. A. E. Russell, magistrate of Tirhoot.

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Case of
DEONATH
RAE & others.

Tried before the Hon'ble Robert Forbes, sessions judge of Tirhoot, on the 21st March, 1854.

Remarks by the sessions judge.—Agreeing as I do with my law officer, in the verdict recorded by him, I yet deem it my duty to refer this trial for the final orders of the Nizamut Adawlut, because the great loss of life,—six persons having come by their death in the riot in which the prisoners were concerned, appears to me to call for a greater punishment than in such a case this court can legally award.

On a charge of riot attended with the wilful murder of six persons, the evidence was not sufficient to prove more than that the party who were attacked ran into a river and were drowned. The

The Government being joint prosecutor with the heirs of five of the persons killed, and one Ramdial Rawot, the servant of Ram Kishen Suhye, and the scene of the riot being about twelve miles from this station; it appears that the said Ram Kishen

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prisoners were
convicted of
culpable homi-
cide and sen-
tenced to four
years' im-
prisonment.

Suhye and all the prisoners, except Seeram Raee, (No. 7,) being share-holding maliks of mouzah Goorganwah; Ram Kishen Suhye held in *khloodkhast* cultivation, a parcel containing forty-one beegahs of *zeeraat* land to which, by the recession of the river Bangmuttee, there had been a small increment, and on Thursday, the 1st of December last, or 16th Aghun, 1261, F. S. the prosecutor and some twenty coolies, and amongst them the six persons deceased, were employed by Ram Kishen Suhye in cutting the paddy crop on the said *zeeraat* land, which is bounded on three sides, viz. north, east, and west by the river Bangmuttee, the south being open towards the village of Goorganwah, when about 8 o'clock A. M. the prisoner, No. 2, Deonath Raee, accompanied by about twenty persons in advance and followed by about 100 rioters in his rear, came from the south or direction of the village to the *zeeraat* land, and the prisoner, No. 2, Deonath Raee, having ordered the rioters to *mar* the coolies of Ram Kishen Suhye, he himself (Deonath Raee) struck the deceased Mohce Jolaha and the prisoner, No. 9, Indurjeet Raee, the deceased, Nakchade, with *lattees*, and the prisoners, No. 3, Koonce Raee, No. 4, Tokhun Raee, No. 5, Bhekhnarain Raee, No. 6, Hyburn Raee, No. 7, Seeram Raee, and No. 8, Jugroop Raee (with Rampreshad, Ressul Raee, Muhadev Raee, Nakchade Raee, Ablakh Raee and Pran Raee not yet apprehended) together assailed and struck the deceased Bekao, Mohungyoo, Goordial and Boukull, all with *lattees*, and driving them along with blows of *lattees* chased them into the river, and though the water at the place, where the deceased coolies entered the river, was not above their thighs, yet as the prisoners continued beating them, the latter fell down in the water and being unable to rise were drowned. The prosecutor and other coolies, however, having swam the river, got to the other side and escaped, and among the twenty

* No. 1, Munohur Rawoot.

„ 2, Kookoo Rawoot.

„ 3, Kunhye Rawoot.

coolies the prosecutor at the time told them, witnesses Nos. 1, 2 and 3,* to bear witnesses to what occurred, to which effect those three persons de-

posed; with the record is a notice given at the thannah of Mozuffepore on the 30th November, or day preceding the riot, by Roopun Gorait on the part of the prisoners to the effect, that Ram Kishen Suhye was collecting people and preparing to cut the paddy, and on the 1st December also, after the riot had occurred, the same Roopun Gorait gave information at the thannah that Ram Kishen Suhye's twenty labourers having come to cut paddy, No. 2, Deonath Raee and others, about thirty or forty people, had beaten the labourers and driven them off and that four of the latter having fallen into the river were drowned, but the rest, having swum, got across the river, and it was added that “no one had beaten the coolies who were drowned.”

The prosecutor, Ramdial Rawoot, also on the 1st December, after the riot had taken place, gave information at the thannah that the twenty coolies were cutting the crop of paddy, when No. 2, Deonath Rae and all the prisoners (except Seeram Race) and others came, and having by order of Deonath Rae, killed Mohee Jolaha, Nakchade, Mohunggoo, Goordyal, Bonk and Bekao with *lattees*, threw them into the river. This deponent refused to give the names of his witnesses at the thannah to prevent, as he said, the opposite party's tampering with them, promising, however, to do so when the darogah should make his enquiry on the spot.

The usual mofussil investigation was made jointly by the magistrate's Nazir and the darogah of Mozufferpore, in the course of which six bodies were found at different times and places floating on the surface of the river, having become inflated by water, two only of which, those of the deceased Mohee Jolaha and Bonk, were satisfactorily identified, the other four being too much eaten and decomposed to admit of recognition. All the six bodies discovered were sent into the station for medical examination, and that of the deceased, Mohee Jolaha, having been examined by the sub-assistant surgeon, he reported that "the body was covered with sand, but not much decomposed. The forehead and the bones of the face, the neck and throat were completely devoid of the soft parts belonging to them. The sockets of the eyes were emptied of their contents, and the nose was destroyed, leaving the cartilage free. There was no extravasation of blood found by dissection around the edges of these injuries, which were twisted and irregular, looking as if gnawed by some animal after death. On opening the body, the brain, heart, and lungs were found healthy; liver somewhat enlarged, but neither inflamed nor congested; stomach contained a *congee* like fluid. There were no marks of external violence in other parts of the body, I was unable to ascertain the immediate cause of death, but from such a healthy condition of the internal organs cannot ascribe it to the natural causes."

The body of the other identified person, Bonk, was examined by Dr. Simpson, the civil assistant surgeon, who found that "the body was in a state of advanced putrefaction and had been immersed in water. Much of the flesh and the whole of the internal organs were either so devoured by animals or so putrefied, that no opinion as to the cause of death could be formed. There were no marks of violence, such as sword-cuts, fractures, &c., discernible. I am therefore unable to give any opinion as to the cause of death."

Regarding the four bodies of the persons unidentified, Dr. Simpson, who examined them, reported that, "they had been under water and the soft parts were almost destroyed by putrefaction and animals; I could detect no appearance of injuries on

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1854. the bones and from the remains of the flesh no opinion could be formed as to the cause of death."

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Twenty persons were inserted in the calendar as eye-witnesses and one of them Bhojraj Misser, No. 13, being reported absent,

the remaining nineteen were examined in this court, and their evidence to my mind, fully establishes the guilt of the accused, for out of that number ten witnesses* deposed particularly to seeing the rioters on the part of Deonath Raee, about 150 men came to the land, where the coolies were cutting paddy, the striking of the deceased,

Mohce Jolaha, by the prisoner No. 2, Deonath Raee, with a *lattee* on different parts of the body, and driving him into river.

† No. 1, Munohur Rawoot. Nine witnesses† also deposed particularly to the same effect in regard to the prisoner, No. 9, Indurjeet Raee, whom they saw striking the deceased, Nukchade, also with a *lattee* on different parts of the body and driving into the river.

Seven witnesses‡ too deposed to seeing the prisoners, No. 3, Koonee Raee, No. 4, Tokhun Raee, No. 5, Bheknarain Raee, No. 6, Hyburn Raee, No. 7, Seeram Raee, and No. 8, Jugroop Raee, together assail and strike the deceased, Bhokoo, Mungoo, Goordyal and Bonk, and drive them into the river. Besides which all the eight

prisoners were plainly recognized by at least two and some by several more witnesses, all different from those already enumerated, except No. 18, among the rioters, when they in a body beat and pursued the six deceased persons into the river, where they were drowned.

No. 9, Ram Bhujoo,
" 10, Nakchade Rawoot,
" 11, Hulkhoree,
" 12, Mirit Mahtoo,
" 16, Sheo Suhaye Chowkeedar,
" 17, Chuttoo Dhobee,
" 19, Jairam,
" 20, Puttee Raee,

Deposed to recognizing the prisoner, No. 2, Deonath Raee.

No. 4, Bhudye,

„ 10, Nakchade Rawoot,

„ 14, Kehree Mahtoo,

„ 16, Sheo Suhaye Chowkeedar,

„ 18, Suboora Chumar,

„ 19, Jairam,

„ 4, Bhudye,

„ 11, Hulkhoree,

„ 14, Kehree Mahtoo,

„ 18, Suboora Chumar,

„ 4, Bhudye,

„ 18, Suboora Chumar.

„ 4, Bhudye,

„ 10, Nakchade,

„ 11, Hulkhoree,

„ 17, Chuttoo Dhobee,

„ 18, Suboora Chumar,

„ 9, Ram Bhujjoo,

„ 11, Hulkhoree,

„ 12, Mirit Mahtoo,

„ 18, Suboora Chumar,

„ 4, Bhudye,

„ 9, Ram Bhujjoo,

„ 10, Nakchade,

„ 11, Hulkhoree,

„ 12, Mirit Mahtoo,

„ 14, Kehree Mahtoo,

„ 15, Dindyal Koowur,

„ 16, Sheo Suhaye Chowkeedar,

„ 17, Chuttoo Dhobee,

„ 18, Suboora Chumar,

„ 19, Jairam,

„ 20, Puttee Racee,

„ 4, Bhudye,

„ 9, Ram Bhujjoo,

„ 18, Suboora Chumar,

Deposed to recognizing
the prisoner No. 3, Koon-
nee Racee.

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Deposed to recognizing
the prisoner No. 4, To-
khun Racee.

Deposed to recognizing
the prisoner No. 7, Bhak-
narain Racee.

Deposed to recognizing
the prisoner No. 6, Hy-
burn Racee.

Deposed to recognizing
the prisoner No. 7, See-
ram Racee.

Deposed to recognizing
the prisoner No. 8, Jug-
roop Racee.

Deposed to recognizing
the prisoner No. 9, In-
durjeet Racee.

In this court too, all the eight prisoners were plainly pointed out and satisfactorily recognized, each by at least two of the witnesses, as the persons whom they had deposed to seeing in the riot.

The tabular abstract statement of evidence prescribed by the Circular Order No. 9, of 31st August, 1853, shews that some of the witnesses, who had named certain prisoners either before the police or magistrate or both, did not name those prisoners in this court, such witnesses when interrogated in this court as

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to the discrepancy, deposed to their having stated the names of the prisoners found omitted, but could not explain why their names were not found in their (the witnesses) evidence.

All the prisoners pleaded *not guilty* in this, as they had done in the foudjary court and mofussil.

The prisoner No. 2, Deonath Race, defended himself by urging, that the coolies of Ram Kishen Suhye having come and cut the paddy were taking it across the river in four boats, one of which sunk, and the coolies were drowned. He likewise pleaded an *alibi*, and that Ram Kishen Suhye had through enmity implicated him. He cited five witnesses and one being reported absent, the other four were examined. Of two of them, who deposed to the sinking of the boat, one stated that he saw it sink and one heard it said that a boat had sunk, and both deposed that they only heard that the deceased, Mohee Jolaha (whom the prisoner, Deonath Race, struck), had been drowned. Both these witnesses are the prisoner's own brothers. Both too admitted that they had often before given evidence, and their testimony was altogether unworthy of credit. This prisoner's other two witnesses only spoke from hearsay as to the sinking of the boat, one of them deposing that he had heard of Mohee Jolaha's being drowned.

The prisoners, Nos. 7, 8 and 9, Seeram Race, Jugroop Race and Indurjeet Race, set up *alibis* in their defence, which however their witnesses did not establish.

The defence of the remaining prisoners was that the deceased came by their death by the boat sinking and their being drowned. Some too pleaded that there have been foudjaree cases going on between them and Ram Kishen Suhye, in revenge for which the latter had implicated them. All too, except the prisoner, No. 4, Koonce Race, called witnesses (he declining, on the ground that he had been bought over by the prisoner), but of sixteen examined for the defence and who, almost all, only spoke from hearsay as to the sinking of the boat, the evidence of none of them at all exculpated any of the prisoners.

The *futwa* of the law officer, convicting all the prisoners of riot, attended with the culpable homicide of the six persons deceased, pronounces them liable to discretionary punishment by *tazeer* and in the propriety of this finding, I concur.

It will be seen that in the notice given at the thannah by Roopun Gorait, on the part of the prisoners, on the 1st December, not a word was said of the sinking of a boat as accounting for the deaths of the deceased six persons.

That plea was not urged until the prisoners were called to answer in the foudjary court, while the careful but uncalled for introduction into the same notice, of the information before the institution of any enquiry on the point that "none of the deceased had been beaten," sufficiently establishes concert and

collusion, I consider it to be unquestionably established that the six deceased persons beaten and chased by the prisoners took to the river, into which they were followed by their pursuers and were drowned. It is currently reported and believed, though not on the record or established, that several other persons met their death at the same time and in the same way. Looking, however, at the fatal result and great loss of life actually ascertained to have occurred in consequence of the riot, I am of opinion that the prisoners merit enhanced punishment and considering it to be clearly shewn that the prisoner, No. 2, Deonath Race, took a more leading and active part in the affair, I would propose his being sentenced to imprisonment for fourteen years, and the remaining prisoners to imprisonment for ten years, all with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and B. J. Colvin.) From the admissions of both parties, we consider it established that on the day in question the prosecutor, Ramkissen Suhye, had collected some coolies to cut the *dhan*, on the disputed *deeyarah* lands in the hope of securing it for himself, when Deonath's people appeared and the coolies fled before them, and on endeavouring to cross the river, some of them were drowned.

The defence set up by the prisoners, that these men were drowned by the accidental sinking of one of the boats in which they were carrying off the *dhan* to the other side of the river, is, in our opinion, negatived by the fact that the darogah dragged the river in that part without discovering any traces of a sunken boat, and we therefore see no reason to doubt the statement of the prosecution, attributing the deaths of those who were drowned to the attempt they made to get across the river by fording the stream.

The proof on record is sufficient to establish the fact that two men, at least, whose bodies were recovered and recognized, were so drowned. From the *post mortem* examination, we see no reason to believe that their deaths were from the effects of personal violence, actually inflicted on them by the opposite party, but were the consequence of their attempt to cross the river as the readiest means of escaping from the violence of Deonath's people. This, however, is sufficient to convict those concerned in the attack of culpable homicide.

In our opinion, there is sufficient evidence to the identity of all the prisoners, and we agree with the sessions judge and the Moulvee in convicting them of the culpable homicide of Mohee Jolaha, and Bonk, but as it appears that the river is narrow and that most of those, who attempted to cross, did so without much difficulty, we do not consider the prisoners should be regarded as wilfully intending to drive those, who were drowned, into imminent danger. We therefore deem it right to reduce the punish-

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ment, recommended by the sessions judge, and sentence the prisoners to four years' imprisonment and fifty rupees fine in lieu of labor, payable in fifteen days from receipt of the sentence, or with labor till such fine be paid.

We would call the attention of the sessions judge to the fact, that the plea, set up by the prisoners in their defence of the sinking of one of the boats, was made by some of them at so early a stage in the enquiry as to have been reported by the darogah, and that the darogah dragged the river to ascertain if any boat had been sunk there, whereas the sessions judge treats it as having been first pleaded by the prisoners at the foudjary.

PRESENT:

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

IN TRIAL No. 1. BRIJO MOHUN SURMA UGGRODANEE
AND GOVERNMENT,

versus

TARACHAND DEB (No. 4.)

IN TRIAL No. 2. SUMBHONATH SHA,

versus

Mymensingh. TARACHAND DEB (No. 5, APPELLANT,) SHEIKH MEEA-
JAN (No. 6,) AND SHEIKH DHOLOO (No. 7.)

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others.

CRIME CHARGED.—*In trial No. 1.*—No. 4, 1st count, burglary and theft; 2nd count, knowingly receiving stolen property. *In trial No. 2.*—Nos. 5 and 6, 1st count, burglariously stealing from the house of the prosecutor cash and property, valued at Rs. 78-9; 2nd count, knowingly receiving and possessing the property obtained by the above theft, and (No. 7,) charged with the above 2nd count.

The prison-
er's guilt was
held to be prov-
ed by his own
admission.

CRIME ESTABLISHED.—*In trial No. 1.*—Knowingly receiving stolen property. *In trial No. 2.*—Nos. 5 and 6, burglary and theft and knowingly receiving stolen property, and No. 7, knowingly receiving stolen property.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. Trotter, sessions judge of Mymensingh, on the 2nd March, 1854.

Remarks by the sessions judge.—*In trial No. 1.*—A burglary having been committed in the prosecutor's house and property stolen, he reported the matter to the police, but at that time no clue to the theft or the thief was obtained; nearly three months

afterwards, another theft having occurred in the neighbourhood, at the house of Sumbhoonath Sha, he communicated to the police his suspicion against the prisoner and others from their easy circumstances without any apparent means of livelihood. The parties were accordingly apprehended and along with the property stolen from Sumbhoonath Sha's house (vide the following case,) the prisoner gave up to the police a portion of the property belonging to the prosecutor in this case which he had lost, and having recognized the articles, he charged him with the theft. Before the police and the magistrate the prisoner denied committing the theft himself, and said that, when enquiries into the theft at Sumbhoonath's house were being made, his friend Meeajan (No. 6,) of the following case, gave him these articles to keep and knowing them to be stolen property, he concealed them, under the ground in a *chun khet* from which place he gave them up to the police. Before me, however, he denied having either committed theft or made over any articles to the police, saying that they were concealed in the *khet* by Meeajan, who first brought them in a bundle to him, but he declined to keep them, and that on the night in question, he was at a different place. The witnesses examined by him, however, could not either give him a good character, or support any of the pleas urged in his defence. The jury delivered a verdict of guilty on the 2nd count, viz. knowingly receiving stolen property, I concurred in this verdict.

In trial No. 2.—The prosecutor, Sumbhoonath Sha, having communicated to the police that he suspected the prisoners, Nos. 5 and 6, and others, of having committed the burglary at his house, the police apprehended the parties who confessed the crime and made over the property stolen, viz. No. 5, gave up from under the ground of a *chun khet* property, Nos. 1 to 8 and 17, and by the direction of No. 6, No. 7, gave up property, Nos. 9 to 16. When the enquiry into this theft was going on, No. 5 delivered some portion of the property stolen from the house of the prosecutor in the preceding case. No. 6, on his apprehension stated before the police and also before the magistrate, that he, No. 5 and others, committed the theft and received their respective portions of the spoil. In this court he denied his mofussil and foudjaree confessions and urged ill-treatment by the police. No. 5, stated before the police that he did not commit the theft but had only kept the property which Meeajan, No. 6, gave him to secrete and he accordingly concealed it under the ground in the *chun khet* whence he gave it up. Before the magistrate he said that he was asked by No. 6, to keep it, but he declined, so No. 6, himself concealed it in the field, and that he only pointed out to the police, where it could be found. In this court he denied the charge and stated that he gave up no property. Prisoner, No. 7, in the mofussil and before the magistrate, stated

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he purchased the articles he gave up, for Rs. 3-12, and concealed them through fear, when he heard that the police had arrived in their village. In this court, however, he denied having either bought or given up any property and stated that he was ill-treated by the police and did not confess. No. 5 did not examine any witnesses and those cited by No. 7, knew nothing in his favor. The jury declared prisoners, Nos. 5 and 6, guilty of burglary and theft and knowingly receiving stolen property, and No. 7, of the 2nd count, only, in which verdict, I concurred; No. 5, has been sentenced to a consolidated punishment of five years' imprisonment, as he has been convicted in two cases of theft.

Sentence passed by the lower court.—Tarachand Deb, imprisonment with labor and irons for five years, being a consolidated sentence passed in trials Nos. 1 and 2. In trial No. 2, Sheikh Meeajan, imprisonment with labor and irons for four years, and Sheikh Dholoo, imprisonment with labor and irons for two years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We see no reason to interfere with the consolidated sentence passed upon the prisoner, appellant, Tarachand Deb, in cases Nos. 1 and 2. His guilt of the knowing receipt of stolen property is established by his several answers, and is in a manner acknowledged in his petition of appeal.

PRESENT :

A. DICK, Esq., *Judge, and*

Mymensingh.

B. J. COLVIN, Esq., *Officiating Judge.*

1854.

GOVERNMENT AND MUSST. PUDAH BEWAH,

May 22.

Case of
RADHOO DOSS
and others.*versus*

RADHOO DOSS (No. 8,) CHAND DOSS (No. 9,) SHEIKH HENGHAH (No. 10,) RAMANAND DOSS (No. 11,) DOORGARAM DOSS (No. 12,) PUNDIT DOSS (No. 13,) AND SUNKAH DOSS (No. 14.)

The prisoners' appeal was rejected upon the evidence for the prosecution and their declining to call evidence in support of their own defence.

CRIME CHARGED.—1st count, wilful murder of Needhun Kooloo; 2nd count, assaulting and wounding Arradhun Kooloo.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. Trotter, sessions judge of Mymensingh, on the 18th April, 1854.

Remarks by the sessions judge.—From the evidence of the

* No. 1, Arradhun (wounded.)
2, Musst. Sookce.
,, 3, Musst. Ashrofee.

prosecutrix and the witnesses* for the prosecution, it appears that the prosecutrix was first married to the prisoner (No. 10,) Sheik Hengah,

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and in Bhadoon last, she eloped with the deceased Needhun to another village and married him. This created ill-feeling between him and the prisoner No. 10, and the other prisoners neighbours of the latter. As the deceased and his brother Arradhun (witness No. 1,) who went to the prisoner's village to take away some *dhan* and *sursoo*, were returning with two loads of *dhan* at about a *pukur* of the night, the prisoners caught them and assaulted them most severely with *lattees*, &c., and dragged them to the house of witness No. 16, Mohun Doss, the Chowkeedar of the village, and seeing that deceased was in a bad way they tried to revive him; he however died in the morning. The civil surgeon could not discover the cause of death, on account of the advanced stage of decomposition in which the body arrived at the station, the only thing observable being some bruises on the scalp, neck and cheek, which must have been caused by blows of some hard instrument such as a *lattee*, and the bruises alone would have been sufficient to cause death. The prisoners denied the charge of murder and urged in the mofussil and before the magistrate, (with the exception of Nos. 10 and 13,) that about midnight the deceased and witness No. 1. had come to steal *dhan* from the granary of No. 9, Chand Doss, and seeing that they were making off, the prisoners chased them and succeeded in securing witness No. 1, the other man having escaped, and next day his corpse was found in a well belonging to Sheikh Mahomeddy witness No. 4, where they suppose he fell in as he was running away. No. 10, simply denied the charge, and stated that the only apparent enmity between him and deceased was, that the latter had enticed away his wife the prosecutrix, and No. 13, that he had been falsely charged. In this court prisoners denied the charge, saying that they have been falsely charged and the deceased might have died by falling into a well; at least the Chowkeedar, witness, No. 4, &c., so reported to the thannah, Nos. 8, 9, 11 and 12, adding that the reason was the existence of a boundary dispute between their and the prosecutrix's zemindars. They did not however examine a single witness for their defence, in the belief, they said, of their having been tampered with by the prosecutrix. The jury, on the ground of previous enmity existing between the parties, returned a verdict of guilty of culpable homicide on strong presumption, in which I concur.

Sentence passed by the lower court.—Each to be imprisoned for five (5) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court, after a careful perusal of the case, see no reason to interfere with the sentence passed

1854. against the prisoners. They observe that though the prisoners, appellants, set up a defence of theft against the deceased and his brother, and allegation of deceased having fallen into a well, while running away, yet they declined to call a single witness in support of their statement.

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Case of
RADHOO Doss
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Further note by Mr. Dick.

The Court trust that the magistrate has taken proper notice of the conduct of the Chowkeedar, Hookum Chand, who reported to the thannah a tale totally different from his own depositions at the trial; and which was proved false by the evidence of Mohun Muddee and other witnesses.

PRESENT :

A. DICK, Esq., *Judge, and*
B. J. COLVIN, Esq., *Officiating Judge.*

GOVERNMENT AND MUSST. OOZEERUN KUSBEE,

Dacca.

versus

SHEIKH KAZIM.

1854.

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Case of
SHEIKH KA-
ZIM.

CRIME CHARGED.—Severely wounding Musst. Oozeerun Kusbee, prosecutrix, with intent to kill or do her some grievous bodily harm.

Committing Officer.—Mr. W. H. Brodhurst, joint-magistrate of Furreedpore.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 28th April, 1854.

Wounding
with intent to
kill was held
to be proved
against the pri-
soner.

Remarks by the sessions judge.—Oozeerun Kusbee, the prosecutrix, stated that on the night of the 7th Cheyte, the prisoner came, by previous arrangement, to her house. They slept together, and about 10 o'clock, the prisoner wounded her severely on the neck and other parts of her person. The motive was said to be that prosecutrix had refused to marry the prisoner. She also charged him with the robbery of some property, but of this there was no proof. The prosecutrix from the first had charged the prisoner with the crime.

Several witnesses, who came out of neighbouring houses when the alarm was given by the prosecutrix, had recognized the prisoner at the time, and also the shoes he had left behind him.

The sub-assistant surgeon deposed to the severe nature of one of the wounds, which had probably been inflicted by a *dao* like that produced.

The prisoner pleaded *not guilty*, denying he had been in the prosecutrix's house when the crime was committed; but before the joint-magistrate he had admitted being in the house. He

called some relations as witnesses, who deposed to a criminal connection between one Nazim Chowdry and the prosecutrix, and denied they knew whose property the shoes were.

The law officer convicted the prisoner of wounding with intent to do her some grievous bodily harm.

I do not quite agree in the *futwa*, as I consider the first wound inflicted on the neck to show an intention to murder the prosecutrix, and as I do not think there can be any doubt of the prisoner's guilt, as regards infliction of the wounds, would recommend that he be imprisoned for fourteen years with labor and in irons.

I beg to observe that I refer the case under Section 3, Regulation 12, of 1829.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We concur with the sessions judge in convicting the prisoner of intent to kill, for the wound on the arm was most severe, and there is no proof that the instrument with which the wounds were inflicted was lying near the prisoner, and accidentally there. The wounded woman declares it belonged to prisoner, and that he must have brought it with him. We therefore sentence the prisoner to fourteen years' imprisonment with labor in irons in banishment.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs., *Judges*.

GOVERNMENT,

versus

HOSSEIN FUQUEER (No. 3,) HOBEEOLLAH (No. 4,) SHEIKH HAVIL (No. 5,) KANOO (No. 6,) MUSST. LUKHUN (No. 7,) AND MUSST. CHANDO (No. 8.)

CRIME CHARGED.—Perjury in having, the prisoner No. 3, on the 20th, and prisoners Nos. 4, 5, 6, 7 and 8, on the 21st March, 1854, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the joint-magistrate of Furreedpore, that they saw Meahjan alias Boodhye murder Musst. Aduree, his wife, by cutting her throat with a "*sen*" (an instrument used in cutting date trees) and in having on the 22nd April, 1854, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the sessions judge of Dacca, holding sessions at Furreedpore, that they did not see Meahjan alias Boodhye cut the throat of Aduree, such statements being contradictory of each other on a point material to the issue of the case.

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QUEER and
others.

A mitigated sentence was passed upon the prisoners, in consequence of their being supposed to have acted in part under the influence of their husband.

1854. Committing Officer.—Mr. W. H. Brodhurst, joint-magistrate of Furreedpore.

May 25. Tried before Mr. S. Bowring, sessions judge of Dacca, on the 28th April, 1854.

Case of Hossein Fu-
queer and
others. *Remarks by the sessions judge.*—A person named Meahjan was committed by the joint-magistrate to the sessions on a charge of murder. The witnesses, prisoners in the case now referred, deposed before the above officer, that Meahjan's wife had murdered her child, in consequence of some quarrels between her and her mother-in-law, when Meahjan coming home killed his wife with a *sen dao* (an instrument used for tapping date trees.) At the sessions however they denied all knowledge of the murder, rendering it necessary to acquit Meahjan and to refer the case to the joint-magistrate, who committed the prisoners under Act I, of 1848, for perjury.

The statements made in the foudaree and in the sessions court were proved by witnesses.

The prisoners pleaded *not guilty*, some denying they had given such evidence as was recorded by the joint-magistrate, and the others stating they had given such evidence from fear; they called no witnesses.

The law officer convicted all the prisoners.

There cannot be a doubt that one of the statements made by all the prisoners is false, and although there seems in the case of murder to have been some delay on the darogah's part, there is no reason to suppose improper influence had been had recourse to in the joint-magistrate's court. The prisoners Nos. 3 and 4, have no excuse, and I have sentenced them to five years' imprisonment each. Nos. 5 and 6, are son and father in consideration of which circumstance, I have passed the mitigated sentence of three years, and as regards the prisoners Musst. Lukhun and Chando Nos. 7 and 8, I consider that they acted under the control of their husband, the prisoner Havil (No. 5.) They could not speak the truth without criminating him, and I would therefore acquit them. They are mother and step-mother to Meahjan and have this further claim to consideration.

I have forwarded the *nuthee* in the case of murder in which Meahjan was prisoner.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We cannot concur with the sessions judge in acquitting the prisoners, but we think the circumstances stated by him afford ground for mitigation of punishment. We therefore sentence Nos. 7 and 8, to imprisonment for six months with labor suitable to their sex.

PRESENT :

J. DUNBAR AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT,

versus

UCKOOL CHUNG.

Dacca.

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Case of
UCKOOL
CHUNG.

CRIME CHARGED.—*In trial No. 1.*—1st count, accomplice in the murder by thuggee or strangulation of Ram Konnye Buxshee and Goluk Doss his servant, and having plundered their property worth Rs. 104-12; 2nd count, participating in the plundered property; 3rd count, being by profession a thug and belonging to a gang of thugs. *In trial No. 2.*—1st count, having murdered by thuggee or strangulation Rammohun Chund of Goota Bhadam, thannah Thoongee, zillah Dacca, and plundered Rs. 2; 2nd count, participating in the plundered property; 3rd count, being by profession a thug and belonging to a gang of thugs.

Prisoner convicted as an accomplice in murder by thuggee, and of belonging to a gang of thugs, sentenced to transportation for life.

Committing Officer.—Lieut. C. H. Keighly, assistant general superintendent for the suppression of thuggee and dacoity.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 23rd March, 1854.

Remarks by the sessions judge.—*In trial No. 1.* The approvers* declared that the prisoner Uckool Chung had been concerned in the year 1236, in the murder of Ram Konnye Buxshee and Goluk Doss, and generally these and the other witnesses, declare the prisoner to be a thug, detailing the expeditions on which he had gone, and the murders then committed.

The law officer, who sat with me on the trial, acquitted the prisoner on the two first counts for want of sufficient proof.

I agree in the *futwa* as regards the two first counts of the calendar, but the approvers give details of several murders in which the prisoner was concerned. The time and place of each are distinctly stated, and in 1841, the prisoner was declared to be a thug. There are some slight discrepancies in the evidence but not material, such only as may naturally be found after the lapse of so many years in the depositions of any native witnesses.

The defence of the prisoner, that he is accused in consequence of his, the prisoner's, brother having been a thug approver, and caused the apprehension of those who now accuse him of the crime, seems to me of little avail. I should be the last person to wish to punish the prisoner for the crimes of his relations, but it is well known, that the profession of thuggee is often hereditary, and as from the depositions of the prisoner's witnesses, it is evident, that he, the prisoner, was on intimate terms with the

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thug approver, his brother Rae Chand, there can, from this fact alone, be little doubt, but that the prisoner was, in some measure, cognizant of the proceedings of the gang and of his brother's profession.

One of the prisoner's witnesses* is brother of a convicted thug, and the ease with which witnesses to respectability can be procured, prevent me from placing much confidence on such testimony.

The story of the thug approvers is generally consistent, and though in the absence of other evidence, I would not convict the prisoner of being an accomplice in the murder charged, I consider it proved that he was a thug and belonged to a gang of thugs, of which I convict him and would sentence him under Section 1, Act XXX. of 1836, to imprisonment for life with hard labor.

Cheedam Mcestree and other alleged members of the gang were, it is true, acquitted on former occasions, but I cannot think this weighs in favor of the prisoner. There do not appear to me to be in this case, the same discrepancies which induced the court to acquit Cheedam on the 11th December, 1850. The loose manner in which natives relate circumstances, always throws some doubt on their evidence, in regard to matters which occurred many years back, but in the present case, it seems to me that, considering all the circumstances and the nature of the evidence, this is as good as is likely to be procured.

In trial No. 2.—The evidence against the prisoner Uckool Chung was nearly the same as reported in my letter No. 218, of this date, and the *futwa* of the law officer was an acquittal on the two first counts.

For reasons recorded in the letter above alluded to, I would convict the prisoner on the 3rd count in this case also.

Resolution of the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) No. 337, dated the 7th April, 1854.

The Court, having had before them the proceedings held on the trial of Uckool Chung, observe that the original statements of the approvers, as given in their detailed confessions, are not with the record. It contains only an abstract from the general register of thugs, in which is set forth the substance of the declarations made by the several thugs named. This is not sufficient to enable the Court to judge how far the depositions of the approvers, as given at the trial, may be relied on; it is necessary that the Court should have before them their original detailed confessions. They direct therefore that the detailed confessions of *all* the approvers, named in the calander for the prosecution, as well as that of Rae Chand Chung, the brother of the prisoner, be called for from the sessions judge.

In reply to the above resolution the following letter No. 294, dated the 2nd May 1854, was submitted by the sessions judge.

Adverting to the Court's resolution No. 337, of 7th ultimo, I have the honor to submit the original confessions and copy* of an explanation furnished by the assistant general superintendent of thuggee under date the 27th ultimo.

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* From the Assistant General Superintendent for the suppression of thuggee and dacoity to the sessions judge of Dacca, No. 31, dated the 27th April, 1854.

I have the honor to acknowledge the receipt of your letter of the 24th instant, from Furreedpore, enclosing the copy of a "resolution of the Nizamut Adawlut, calling for the original detailed confessions," of the approvers

in the case noted in the margin ;* in answer I beg to forward you the original confessions of Sur-roop Næg (lately deceased) and Kishen Sein of the affair of Shabar in which Konnye Buxshee was murdered, and from these you will perceive that the documents which have been considered by the sudder "only an abstract from the general register of thugs" are the true copies attested by one of the only confessions I have in this office. Although the form is irregular and entirely different to that which has always been in use in the Hooghly office, still you will perceive that the expeditions are carefully described in all points, though only signed by the Assistant General Superintendent without the usual "attestation on *ekrar*," the original confession of Ramlochnun Sein, the other approver who was engaged in the murder of Konnye Buxshee is in the *nuthee* of "Cheedam Meestree" attached to the papers in this case. With regard to the confessions of the other approvers, from which the general charge of thuggee is brought against the accused, I beg to state that every expedition, in which the name of the accused is mentioned, has been carefully copied, attested by me and attached to the *misl*, all in the form of the accompanying with the exception of that of approver Goluk Deb, who was only admitted as an approver in 1852. There is no original confession of Raee Chand Chung's in this office. For several years after the establishment of the Dacca thuggee office, the dangerous system appears to have been allowed of permitting the approvers to make their confessions at different times in detached statements, and there are now seven of the first approvers made in this office, who do not appear to have made "original confessions" beyond the general one of being thugs. The confessions of the other approvers were taken in the accompanying form until this office was incorporated with the Hooghly one. I can only add that the evidence of these approvers has always been received by the higher courts, and I think the sudder, if they look over the "original confessions," will see that the expeditions are accurately and fully described, although not attested by the Assistant General Superintendent in the manner now usual. In conclusion I must inform you, as briefly as possible, the particular reasons I had for requesting Mr. Dampier's permission to visit these districts. Since the Dacca and Hooghly offices were incorporated in June 1849, the Assistant General Superintendents have been mostly engaged in the arrest of the Keetchuk and Budhuk tribes in the Midnapore and Balasore districts, and the Dacca portion of the office has been much neglected on my joining the appointment in 1831. I found in the case of Cheedam Meestree (committed in 1850) the sudder drew the particular attention of the Assistant Superintendent to the necessity of enquiring into the combination, that appeared to exist either amongst the oldest approvers, or those the last admitted on the arrest of Goluk Deb in 1852, and comparing his detailed confession with that of the others, and on taking the statements of all the approvers of the Dacca division, regarding certain men denounced in Goluk Deb's confession,

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The explanation now offered by the assistant superintendent is, as regards the first part, the same in substance as one before me at the time of the trial although not filed with the record.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) Having had before us the original confessions of the approvers, Kishore Sein, and Ramlochun, made in June, 1841, and compared them carefully with the statements made by them on the trial, we find that they exactly correspond in respect to the murders committed upwards of twenty years ago, near Sabar and Manickgunge, in which the prisoner Uckool Chung is shewn to have participated. Coupling the fact that he was named by these two approvers and by Surroop Nag (deceased) so far back as 1841, as a professional thug, with his own admission that he is the brother of an admitted approver, we see no reason to distrust the evidence against him, to the extent involved in the third count of the indictment, namely, being by profession a thug and having belonged to a gang of thugs. Concurring therefore in the conviction, we sentence the prisoner Uckool Chung, as proposed by the sessions judge, to imprisonment for life in transportation beyond sea.

I found that having no "original confessions" of the older approvers, I had no check upon them whatever, since their several circumstances have confirmed my impressions that a combination does exist amongst them and my desire has been and is to prove it, after carefully examining all the papers concerning "Uckool Chung,"* I conceived I could not well have a clearer case. I found his name entered in the original list of Dacca thugs, denounced by three of the first approvers made in this office and by no less than eight of my present approvers. The only defence made by the accused was that he was the brother of Raee Chand Chung, through whose

* Kishen Doss, Sheikh Surroop and Ramdhun Bose (all since deceased). There are no original confessions of these men.

instrumentality these men had been arrested and convicted; but on referring to my office papers I found that Raee Chand Chung had nothing to do with the arrest of any of the approvers, with the exception of Goluk Deb. Moreover all the old approvers acknowledged that the accused had lived with his brother, all the time he was in the constant habit of going on thuggee expeditions. Such are the outlines of the present case.

There are still a very large number of denounced men in these districts, and though I do not believe that many of them now work together in gangs, still that they do so occasionally is fully proved by papers in this office, and as long as a combination exists amongst any body of my approvers, all my endeavors to stop the system entirely, must be rendered futile.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT,

versus

ZUMEER SHEIKH.

Nuddea.

1854.

CRIME CHARGED.—Dacoity in the house of Kalachand Napit, in which property to the value of Rs. 8-8 was plundered.

CRIME ESTABLISHED.—Dacoity in the house of Kalachand Napit.

May 26.

Case of
ZUMEER
SHEIKH.

Committing Officer.—Mr. J. E. S. Lillie, magistrate of Nuddea.

Tried before Mr. A. Sconce, sessions judge of Nuddea, on the 10th April, 1854.

Prisoner convicted on his own repeated confessions of dacoity and sentenced to five years' imprisonment. Appeal rejected.

Remarks by the sessions judge.—About 10 o'clock on the night of Monday the 27th February, the house of Kalachand Napit, of mouzah Salika, thannah Mehirpore, was attacked by a band of dacoits. There are several houses on the premises and Kalachand sleeping in one, which the dacoits had not entered, ran off to summon his neighbours. After a while he returned with several neighbours, just as the dacoits were returning, carrying with them such booty as they could find, consisting of metal vessels of sorts and various kinds of cloth, valued in all at 8 or 9 rupees. The dacoits dropped in the path two *thals*, but no property has been received, nor were any of the dacoits recognized.

This prisoner has been convicted on his own repeated confessions delivered to the darogah and to the magistrate. When the darogah had gone to investigate the dacoity, the prisoner Zumeer came to the thannah looking for him. He accosted a burkundaz, Baboo Khan, and said he had something to tell of the Salika dacoity, and admitted that he was present. Immediately after the burkundaz proceeded with Zumeer to the darogah.

In this court, the prisoner pleaded *not guilty*, and in explanation of the confessions ascribed to him, said that the burkundaz had called him, drugged him with tobacco, and got him to go to Salika to the darogah, that the darogah wheedled him to say he knew something of the dacoity and wrote down whatever the burkundaz told him. As to the confessions taken before the magistrate, prisoner said the confession taken by the darogah had been copied.

Prisoner adduced no witnesses, and the case against him being clear and unexceptionable he has been convicted. The motive assigned by him for coming forward was, that he got no share of the plunder.

1854. *Sentence passed by the lower court.*—Five (5) years' imprisonment with labor in irons.
- May 26. *Remarks by the Nizamut Adawlut.*—(Present: Messrs. J. Dunbar and H. T. Raikes.) The evidence to the fact of the dacoity is clear, and the prisoner has twice made voluntary confession to having taken a part in it. He admits that he was actuated in coming forward of his own accord, by a desire to bring punishment on his associates, who would give him no share of the plunder. We see no reason to interfere with the sentence and reject the appeal.

PRESENT:

J. DUNBAR AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT,

versus

- 24 Pergunnahs. SHEIKH BANOO (No. 1,) GOOROODAS ALIAS GOOROO CHURN DOOLOOEE (No. 2,) AND SHEIKH KALLOO (No. 3, APPELLANT.)

1854. CRIME CHARGED.—Going forth with a gang of robbers for the purpose of committing robbery in the house of Issur Chunder Moody.

May 26. CRIME ESTABLISHED.—Going forth with a gang of robbers for the purpose of committing robbery in the house of Issur SHEIKH KALLOO and others. Chunder Moody.

Committing Officer.—Mr. E. A. Samuells, magistrate of 24-pergunnahs.

Three prisoners convicted of going forth with a gang of robbers for the purpose of committing robbery, sentenced to seven years' imprisonment. Appeal rejected.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-pergunnahs, on the 17th February, 1854.

Remarks by the officiating additional sessions judge.—An attempt to commit dacoity was made in the house of the prosecutor, in the month of June last, when about ten or twelve persons entered the village and proceeded to the premises; on the approach of the robbers the prosecutor and his brother made their escape and alarmed the inhabitants, on which the dacoits fled, without being able to effect their purpose: one Khooje Mullah, witness No. 12, of the calendar, who happened to be on his way to Calcutta at the time, heard the noise and *hubbub* consequent on the attack, and met some ten persons coming along the road, having their loins bound, among whom he distinctly recognized the prisoners who were previously known to him; another witness for the prosecution proves that all the prisoners were seen consulting together in the house of the prisoner Gooroodas alias Gooroochurn Doolooee, a man of notoriously bad character, a day or two before the occurrence took place. They were

arrested on the above evidence and confessed both before the police and the magistrate. Their confessions are consistent and amount to complicity, in the act of going forth in a gang for the purpose of committing dacoity and making the attempt to do so. The prisoners deny the charge before this court, and call witnesses to prove the pleas severally set up, which are *alibis*. I examined twelve persons on their behalf, but their evidence is by no means of an exculpatory character. The *futwa* convicts of the charge, and I concur in the finding.

Sentence passed by the lower court.—Imprisonment with labor and irons for seven (7) years each.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The prisoner confessed before the magistrate to the attempt as charged. We see no reason to interfere with the sessions judge's order. The appeal is rejected.

1854.

May 26.

Case of
SHEIKH KAL-
LOO & others.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges*.

GOVERNMENT,

versus

KALACHAND PAROEE TEOR.

Hooghly.

CRIME CHARGED.—Having belonged to a gang of dacoits.

1854.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

May 26.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 25th April, 1854.

Case of
KALACHAND
PAROEE TE-
OR.

Remarks by the officiating additional sessions judge.—The prisoner Kalachand Paroee No. 25, was committed by the commissioner for the suppression of dacoity and is charged with having belonged to a gang of dacoits. He pleads guilty to the indictment.

Prisoner con-
victed of hav-
ing belonged
to a gang of
dacoits, sen-
tenced to
transportation
for life.

The witness marginally* noticed, is an approver on the establishment of the dacoity commissioner and proves the charge against the prisoner, showing his complicity in two dacoities committed at different times and in different places.

* Witness No. 1, Behari Singh.

The prisoner confessed crime before the commissioner and admitted having taken part in twenty-six dacoities. The record

† Witnesses Nos. 2 and 3.

of his confession is attested by the persons indicated in the

margin.†

The prisoner makes no defence before this court, repeating his confession.

1854.

May 26.

Case of
KALACHAND
PAROEE TE-
OR.

I convict the prisoner Kalachand Paroee of having belonged to a gang of dacoits, on his plea of guilty and the evidence of the approver Behari Singh, and recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) In concurrence with the sessions judge, we convict the prisoner on his own confessions before the commissioner and sessions judge, of having belonged to a gang of dacoits, and sentence him, as proposed, to imprisonment in transportation for life with labor and irons.

PRESENT:

J. DUNBAR AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT,

*versus*24-Pergun-
nahs.

RAM CHAND PUNDIT (No. 1,) SHOODHARAM DOO-
LOOEE (No. 2,) PUNCHOO DOOLOOEE (No. 3,) AND
SHUBUL DOOLOOEE (No. 4.)

1854.

May 26.

Case of
RAM CHAND
PUNDIT.

CRIME CHARGED.—Going forth with a gang of robbers for the purpose of committing robbery in the house of Bindabhun Mundul Jalia.

CRIME ESTABLISHED.—Going forth with a gang of robbers for the purpose of committing robbery in the house of Bindabhun Mundul Jalia.

Four prison-
ers convicted
of going forth
with a gang of
robbers to
commit a rob-
bery, sentenced
to seven years'
imprisonment.
Appeal reject-
ed.

Committing Officer.—Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 2nd February, 1854.

Remarks by the officiating additional sessions judge.—On the night of the 3rd June last, the prisoners Shoodharam Doolooee, No. 2, and Punchoo Doolooee, No. 3, who are kept under the surveillance of the police, in consequence of being men of suspicious character, were found absent from home. Search was made for them in all directions and it was arranged that the Chowkeedars of the quarter in which they reside, should be on the alert all night and lie in wait for and arrest them on their return. About 2½ A. M. the prisoner, Punchoo, made his appearance, and was seized with a boat-rudder on his shoulders by the witness Bhrijohoree Chowkeedar. Simultaneously almost with this seizure, the prisoner Shoodharam was apprehended at a short distance off by the witness Durpunarain Chowkeedar. He had a pot of toddy on his head and was in company with the prisoner Subal Doolooee, No. 4, and one Madhub Purkait, who effected

their escape. Both the prisoners then and there admitted having gone forth with the intent to commit a dacoity in the house of Bindabhun Mundul, and repeated their confessions at the thannah, where a record of these statements was duly made, as also of the confession of the prisoner Subul Doolooee, No. 4, who was arrested the following day. His recognition, by the witness Durpunarain, was very complete, as on his being challenged by the policeman, when first encountered, he gave up his name, as did his associate. All these mofussil confessions agree and are consistent in their detail. It does not very clearly appear on what grounds the prisoner Ram Chand Pundit, No. 1, was taken into custody, but the magistrate's record shews that he admitted crime both before him and the police, and I have no reason to doubt the truth of those confessions. The prisoner, No. 1, is convicted in his mofussil and foudary confessions, the prisoners Nos. 2 and 3, on their mofussil confession, their arrest at night after having been found absent from home and laid wait for, their clear admission of guilt at the moment of arrest, and prisoner No. 4, on his mofussil confession and recognition by the witness No. 2, at the time of his apprehending the prisoner No. 2. They deny the charge before this court and call witnesses to prove their respective pleas, which are frivolous and which the evidence cited fails to establish to satisfaction.

Sentence passed by the lower court.—To be imprisoned with labor and irons for seven (7) years each.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The prisoner, in his petition of appeal, asserts that he has been wrongfully accused through the machination of his enemies, who colluded with the darogah, but he makes no allusion to his confession before the magistrate, in which he fully admitted the crime with which he was charged, and which is clearly established. We reject the appeal and confirm the sentence.

1854.

May 26.

Case of
RAM CHAND
PUNDIT.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

MUSST. KHERIAH AND GOVERNMENT,

versus

Patna.

CHOONEE LALL.

1854. CRIME CHARGED.—Rape committed on the prosecutrix, Musst. Kheriah.

May 26. Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

CHOONEE Tried before Mr. W. Travers, sessions judge of Patna, on the
LALL. 10th May, 1854.*Remarks by the sessions judge.*—The prosecutrix Kheriah

Prisoner convicted on the clearest evidence of rape. was returning to her home with her aunt Soomeria, witness No. 1, on the evening of the 25th March last. They had been out at labor all day, and it was about two hours after nightfall, when

Remarkable discrepancy in the report of the darogah from the evidence on the trial, not noticed by the lower courts. the defendant came up to the prosecutrix, then walking at some little distance behind her aunt, seized her, threw her down, and proceeded to violate her person ; attracted by the cries and violence, Soomeria returned and saw the defendant in the act, as

Omission * No. 2, Sobhan Chowkeedar. in the margin,* two of whom were
on the part of the magistrate to have the person of the woman outraged, examined by midwives, or the surgeon, observed upon. „ 3, Karoo Roy. chowkeedars on duty near the spot,
„ 4, Tutun Roy. and a third, residing at a short distance off, heard the noise and came
„ 5, Poorun Chowkeedar.

out from his house in time to witness the actual commission of the offence. The defendant received a blow under the eye from a heavy bracelet (*catree*) worn by the prosecutrix, inflicted no doubt accidentally in her struggles to escape.

He is one of the subordinate omlahs of the zemindar and he states in his defence, that the charge is altogether malicious and got up by the witnesses in revenge for his having pressed them rather hardly for an arrear of rent, but I do not consider this statement to be made out in evidence. It would rather appear from the shameless manner in which the crime was perpetrated that neither his victim nor the other parties, who hastily assembled at the spot, would dare to appear against him in court. The charge is I think entirely proved, and in this finding the law officer concurs. I recommend a sentence of seven years' imprisonment with labor in irons. *

Remarks by the Nizamut Adawlut.—(Present : Messrs. A. Dick and B. J. Colvin.) The Court, after a very careful perusal of the record, convict the prisoner, the evidence against him being unusually strong and unimpeachable. The prisoner was seen in the act by persons who assembled on hearing the cries of the prosecutrix. He was instantly seized, and with the pro-

secutrix taken to the nearest police station, or *phanree*; and next morning they were both delivered over to the thannah darogah. Blood was too observed on the clothes of the prosecutrix, and she was in a distressed state, as remarked by the burkundaz of the *phanree*, when brought to him. The prisoner is the gomashta of the village, which greatly enhances his guilt. The Court therefore sentence him, as recommended by the sessions judge, to seven years' imprisonment with labor in irons.

The Court observe that the darogah of Barh, in reporting the case to the deputy magistrate, stated that the woman had appeared before him two days after the occurrence of the outrage, and that she had only as witnesses one or two of her own relatives. Now this is totally at variance with what is deposed to by the prosecutrix, her aunt, the burkundaz, and other witnesses before the deputy magistrate, and the sessions judge; yet neither of those officers seem to have taken any notice of it. The Court further regret to observe on a remarkable and unaccountable omission, on the part of the deputy magistrate, in not having the unfortunate girl immediately examined by midwives, or the native surgeon, to ascertain the fact of her having been injured as she and her aunt had testified.

1854.

May 26.
Case of
CHOONEE
LALL.

PRESENT :

J. DUNBAR AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT AND GOPAUL MULLICK,

versus

SOOKOOR MAHOMMED (No. 26,) SHEIKH OMUR (No. 27,) SHEIKH ZUMEER (No. 28,) AND ASHORREE BEOPAREE (No. 29.)

Dacca.

1854.

CRIME CHARGED.—1st count, riot attended with the murder of Bhagae Mullick, the brother of Gopaul Mullick, prosecutor, and wounding of Jumalooddeen; 2nd count, being accomplices in the above case.

CRIME ESTABLISHED.—Riot attended with the homicide of Bhagae Mullick and wounding of Jumalooddeen.

Committing Officer.—Mr. W. H. Brodhurst, officiating joint-magistrate of Furruckpore.

Tried before Mr. C. T. Davidson, commissioner of Dacca with powers of sessions judge.

Remarks by the commissioner.—The prisoners are charged with riot attended with murder, &c. It appears that on the 24th of August last, the deceased Bhagae went with some others to cut some rice which belonged to his friend Azcem, and that

May 26.
Case of
SOOKOOR
MAHOMMED
and others.

Prisoners convicted of riot attended with culpable homicide and wounding sentenced to seven years' imprisonment. Appeal rejected.

1854.

May 26.

Case of
 سوکوور
 MAHOMMED
 and others.

while so employed, he was attacked by the prisoners and others and killed on the spot, and his body made away with, and the witness Jumalooddeen, who remonstrated with the rioters and endeavoured to recover the body, was severely wounded. It does not appear that any dispute existed between Azeem and the prisoners regarding the field, or the crop upon it, which the deceased Bhagae was having cut for him. The outrage is rather traceable to sectarian origin, the attacking party being followers of Doodoo Meah and Azeem, and Bhagae (deceased) of Keramut Ally. A number of witnesses have been examined, who depose to having witnessed the attack and seen Bhagae killed and his body carried off, and Jumalooddeen wounded. The prisoners deny the charge and plead first that the case has been got up against them, and secondly that Bhagae died of cholera. Neither of these pleas are established. The *fatwa* of the law officer convicts the prisoners of having been present in a riot in which Bhagae was killed and Jamalooddeen wounded, in which finding I concur. The body of Bhagae has not been recovered, but the evidence to his having been killed and his body carried off, is clear, and his death moreover is admitted by the prisoners. They have been sentenced as described in Col. 12.

Sentence passed by the lower court.—Each to seven (7) years' imprisonment with hard labor in irons and in banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) There seems no reason to doubt the credibility of the persons who witnessed this outrage; they state that Bhagae was killed and his body carried off by the assailants, with whom the prisoners were acting in concert, and that Jumalooddeen was wounded in attempting to get the body from them.

The prisoners have only urged their previous defence in appeal, which, as observed by the sessions judge, they were unable to establish. We reject the appeal and confirm the sentence passed upon them.

PRESENT :

A. DICK, AND B. J. COLVIN, Esqs. *Judges.*

GRIDHAREE AND GOVERNMENT,

versus

MITHOO LALL (No. 4,) JHUGGUR (No. 5,) MESTOR
(No. 6,) AND BUNDHOO (No. 7.)

Patna.

CRIME CHARGED.—Wilful murder of Nirmul Goalla.

1854.

CRIME ESTABLISHED.—Homicide.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

May 26.

Tried before Mr. W. Travers, sessions judge of Patna, on
the 7th Jan. 1854.

Case of
MITHOO LALL
and others.

Remarks by the sessions judge.—It is shewn that the deceased Nirmul, who was son of the prosecutor, went to cut grass on the lands of Sooltanpore accompanied by the witnesses Jhune and Bundhoo. That the defendants who belong to Sooltanpore, No. 4, being the putwaree, Nos. 5 and 6, ryots and No. 7, a Burahil of that village, assaulted the deceased with clubs and otherwise so violently maltreated him, that death ensued. The cause of this violence is stated to have originated in the declared fact of injury done to a rice-crop by the deceased whilst cutting the grass, but there appears also to have been an old cause of disagreement between the parties, respecting a trespass of the prosecutor's cattle on the lands of Sooltanpore in the previous year. The defendants carried off Nirmul in almost an insensible state after beating him, and went towards the zemindaree cutcherry, but seemingly being terrified at the severe effects of their treatment of him, they left him to die in a field a short distance from Sooltanpore. On the following morning he was found by his father still alive, and in his presence, as well as in that of the witnesses Chumon and Lukhun, he stated the names of all four defendants, and also of Rungnee, not apprehended, as the parties who had beaten him. On the first occurrence of the disturbance the witnesses Jhune and Bundhoo ran away in fear. The report of the medical officer states the body to have been in so decomposed a state on its arrival at Patna, that he was unable to account for the cause of death. It is stated to have occurred about four hours after the discovery of deceased on the morning following the assault. For the defence an *alibi* is pleaded by all the prisoners, but not supported by any trustworthy evidence. One witness, Bahadoor Khan, called by the prisoner No. 4, deposed to a report which reached him to the effect, that the quarrel arose in consequence of a sickle being taken away from the deceased by the Burahil of Sooltanpore, which tends to prove the prosecutor's case. An information was

The prisoners
were convicted
of culpable
homicide. Ap-
peal rejected.

1854.

May 26.

Case of
MITHOO LALL
and others.

also given at the thannah that the deceased died from taking poison, but this appears to have been set about by the people of Sooltanpore, and is not sustained by any thing better than rumour. The reason assigned for suicide is his mother's displeasure, but sons rarely kill themselves on this account. The assault and beating seems to be fully proved against all four defendants and the *futwa* of the law officer finds homicide, which I accept. The intention to kill the deceased not being apparent from the evidence, and certain provocation having been given by him to cause the assault, I sentence the prisoners each to four years' imprisonment without irons and to pay a fine of 100 Rs. each, on or before the 20th January, now ensuing, or in default of payment to labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court, after a careful perusal of the record and after hearing Ameer Alea, pleader in behalf of the prisoners, and Sumbhoonath Pundit, on the part of the prosecution, are of opinion that no sufficient cause has been shewn for interference with the sentences passed against the prisoners, appellants, by the sessions judge.

PRESENT:

A. DICK, AND B. J. COLVIN, Esqs., Judges.

GOVERNMENT,

versus

Hooghly.

NARAIN MALICK BAGDEE.

1854.

CRIME CHARGED.—Having belonged to a gang of dacoits.

May 26.

Committing Officer.—Baboo Chunder Sekur Roy, deputy magistrate under the commissioner for the suppression of dacoity.

Case of

NARAIN MA-
LICK BAGDEE.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 25th April, 1854.

Prisoner convicted of having belonged to a gang of dacoits and sentenced to transportation for life.

Remarks by the officiating additional sessions judge.—The prisoner, Narain Malick Bagdee, No. 7, was committed by the deputy magistrate, under the commissioner for the suppression of dacoity, and is charged with having belonged to a gang of dacoits. He pleads guilty to the indictment.

The witnesses marginally* noticed are approvers on the establishment of the dacoity commissioner, and prove the charge against the prisoner, showing his complicity in six dacoities committed at various times and in different places.

* Witnesses Nos. 1 & 2.

The prisoner confessed crime before the deputy magistrate, and admitted having taken part in fifteen dacoities. The record

* Witnesses Nos. 3, & 4. of his confession is attested by the persons indicated in the margin.*

The prisoner makes no defence before this court.

I convict the prisoner, Narain Malick Bagdee, of the crime charged, on his plea of guilty and the approvers' evidence recorded against him, and recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We convict the prisoner, on his own confessions before the committing officer and sessions judge, of having belonged to a gang of dacoits, and sentence him, as proposed by the sessions judge, to imprisonment in transportation for life with labor and irons.

1854.

May 26.

Case of,
NARAIN MALICK BAGDEE.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT AND MUSSUMUT BHOOKHNEE,

versus

DOWN ROY.

Tirhoot.

1854.

CRIME CHARGED.—Rape on the person of Musst. Bhookhnee a girl, aged ten years.

Committing Officer.—Mr. F. A. Glover, joint-magistrate of Chumparun.

Tried before the Hon'ble R. Forbes, sessions judge of Tirhoot, on the 1st May, 1854.

May 26.

Case of
DOWN ROY.

Remarks by the sessions judge.—Of the three prisoners committed for trial in this case, two have been acquitted on the concurring opinion of my law officer and myself, and I refer the case for the final orders of the Nizamut Adawlut in regard to the remaining prisoner, whom we agree in convicting of the crime of rape conformably to Clause 3, Section 6, Regulation XVII. 1817.

The prisoner, a lad of about fifteen years old was convicted of rape on a girl of ten years old, and sentenced to four years' imprisonment.

The prosecuting female, Mussumut Bhookhnee, is a girl of about ten, and the prisoner apparently about fifteen years of age, and she states that about the middle of the day of that on which she was ravished, viz., the 11th of April or 28th Chyte 1261. F. S. she was tending the cattle of her grandmother, with whom she lives in the village of Pursounnee, in a plain between that village and mouzah Sesuhnee, in which the prisoner lives, the other two prisoners Dhouree Chokra and Jypal Chokra both aged eleven (acquitted) as well as the witness Ruchia Chokra

1854.

May 26.

Case of
Doun Roy.

No. 2, being also similarly occupied in the same place, when the referred prisoner Doun Roy, came and laying hold of her threw her down on the ground, the other two assisting him by stopping her mouth, and forcibly violated her person. After him the two others one after another had connexion with her, and last of all the prisoner Doun Roy a second time committed the offence. The witness Ruchia Chokra No. 2, having seen the prisoner throw the girl down when he first began to violate her, had gone into the village of Pursounee to give information, and in the way fell in with the witness Chutunkee Dosad No. 1, the Gorait of that mouzah, to whom he related what he had seen, and the latter running to the spot saw the prisoner in the act of having connexion with the girl, whom he heard crying. The other two boys (he deposed) were sitting by not far off, and on seeing him, approaching all three ran away. He followed the prisoner who however somewhere concealing himself could not then be found, upon which he returned to the girl and took her home, observing that there were marks of blood on her clothes both before and behind.

The other witness No. 2, stated that of the two prisoners acquitted, one was holding her mouth and the other her hand, and that she was crying. As however, the evidence of the only persons, one of them a boy too young to be examined on oath, said to have witnessed the outrage was contradictory in regard to the actual part taken in the business of the two latter, who pleading *not guilty* urged that the prosecutrix had implicated them from enmity, and as it seemed doubtful whether those two youths were not too young to have committed the offence with which they were charged, my law officer and I agreed that the evidence was insufficient for their conviction, and they were accordingly acquitted.

The sub-assistant surgeon, who had examined the person of the ravished girl, deposed to finding laceration about $\frac{1}{2}$ of an inch in extent of the lower membrane or pudendum of the organs of generation. The surrounding soft textures were otherwise bruised and swollen, from which I was of opinion that the girl had been violated and penetration completed. There was no other apparent injury.

The prisoner at first pleading *not guilty* in the foudary court, afterwards voluntarily confessed before the attesting witnesses to the effect, that he twice had connexion with the prosecutrix against her will. In this court too he admitted that he had given her pice, and had connexion with her. He called no witnesses.

The *futwa* of the law officer convicts the prisoner of the crime charged and pronounces him liable to punishment by *hudd*, and as the guilt of the prisoner is to my mind clearly established, I concur in the finding.

The prisoner has himself confessed that he twice had connexion with the prosecutrix against her will and making due allowance for his age, which however from his appearance seems to be more than he admits, I am of opinion that with reference to precedents of the Nizamut Adawlut in similar cases, he ought not to be sentenced to imprisonment for a less period than four years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The confessions of the prisoner fully bear out the view taken of this case by the sessions judge, who has detailed all particulars in his letter of reference. We convict the prisoner of the rape charged, and sentence him to four years' imprisonment with labor.

1854.

May 26.

Case of
Down Roy.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT AND MUSST. MANO,

versus

NATH DASS (No. 8,) MUHURAJ MISSER (No. 9,) GHEENA KOEREE (No. 10,) MEHALEE RAWOOTH (No. 11,) NUNKOO (No. 12,) BOCHYE (No. 13,) BUSTEE (No. 14,) MONORUTH MISSER (No. 15,) MOHUNG PASBAN (No. 16,) SHEIKH BHOLAH (No. 17,) HALEEM BEGG (No. 18,) AND SHEIKH FUKIRAH (No. 19.)

Tirhoot.

1854.

CRIME CHARGED.—Prisoners Nos. 8 and 9; 1st count, riot attended with murder and wounding, in which a man, named Fuqueer Chand, was killed, and two other persons were wounded; 2nd count, being the instigators and ringleaders of the above riot. Prisoners Nos. 10 to 19, riot attended with murder and wounding, in which a man, named Fuqueer Chand, was killed and two other persons wounded.

May 29.

Case of
NATH DASS
and others.

CRIME ESTABLISHED.—Nos. 8 and 9, being the instigators and ringleaders of riot attended with culpable homicide and wounding, and Nos. 10, 11 and 12, riot attended with culpable homicide and wounding.

The prisoners attacked the servants of an indigo factory, who were peaceably looking after the cultivation in their (the prisoner's) village. Held that their conviction of culpable

Committing Officer.—Mr. H. E. Russell, magistrate of Tirhoot. Tried before the Hon'ble Robt. Forbes, sessions judge of Tirhoot, on the 18th March, 1854.

Remarks by the sessions judge.—The prisoners were charged with being concerned in the above riot, on the prosecution of the Government jointly with Musst. Mano (the mother of the deceased, Fuqueer Chand), who, an infirm old woman, knew nothing

1854.

May 29.

Case of
NATH DASS
and others.

homicide, one
of the servants
having died
from the ef-
fects of the
blows he re-
ceived, was
correct.

Remarks by
the Court on
the conduct of
the planter.

of the case, but what she had been told of it by her son before he died. It appears, however, from the record and evidence and a perusal of the papers of several cases decided and undecided in the foudary court, that a dispute had for some time existed between the proprietor of the Bulwah indigo factory and the malicks of mouzah Gungour, an Ijmalee mehal, regarding the cultivation of certain land in that mouzah, the former having from the year 1261, F. S. taken a *theka* lease of two annas from some of the malicks, the ryots of Gungour also having, according to the planter's statement, received advances for cultivating indigo, to which, however, the fourteen anna malicks objected, contending that the ryots did not voluntarily agree, but had been forcibly compelled by the planter to cultivate indigo. On the day of the occurrence, which led to this trial, Saturday, the 15th October last, or 27th Aghun 1261, F. S. some of the factory people with twelve or thirteen ploughs were engaged in ploughing some land, the ryots of which had no ploughs or cattle of their own, the deceased, Fuqueerchand, in the employ of the factory, as a *hurkarah*, having come from another place to see whether the land was being sown, when about 300 people on the part of the malicks, armed with clubs, riotously came to prevent the cultivation of the land, and having assaulted the factory-people, so severely wounded the deceased, Fuqueerchand, that he died after five days; two other persons Ramsahye, witness No. 3, and Koodrut, witness No. 4, both servants of the factory, were also slightly wounded in the riot.

On the same day and before the riot took place, a letter had been despatched by Mr. G. Collis, Jr. of the Bulwah Factory, to the magistrate, intimating his expectation of a disturbance, and requesting that authority to adopt measures to prevent it. Mr. Collis, on the same day, sent a Hindoostanee letter to the thanadar of Jalah. On the 16th also, or day succeeding that of the occurrence, Mr. Collis sent another letter to the thanadar, informing him of what had taken place and stating that Fuqueerchand and the other wounded persons were senseless; on receipt of which, the thanadar and mohurir proceeded to Gungour to enquire into the affair, and on the 17th, the deposition of the dying Fuqueerchand was taken down by the thannah mohurir in his presence and that of two other subscribing witnesses. In that deposition, the statement of the deceased was that the prisoners, Nath Doss (No. 8,) and Maharaj Misser (No. 9,) having given the order, the prisoner, Gheena Koeree (No. 10,) struck him (deceased) a blow with a *lattee* on the left thigh, the prisoner, Mehalee Rawoot (No. 11,) a blow with a *lattee* on the right cheek, the prisoner, Munhoo (No. 12,) a blow with a *lattee* on the back, and one Gridharee (absconded) a *lattee* blow on the left shoulder, and he added that Ramsahye and Koodrut (the witnesses, Nos. 3 and 4,) were beaten by the prisoners,

Bochye (No. 13,) Bustee (No. 14,) Munnorut Misser (No. 15,) Maharaj Pasban (No. 16,) Sheikh Bholah (No. 17,) Halum Beg (No. 18,) and Sheikh Fukeerah (No. 19,) one Kolye (absconded) and Waris Allee Beg and Surfaraj Allee Beg (separately committed in trials* Nos. 3 and 4, respectively for this month) being present and aiding and abetting in the riot. This declaration of the deceased was duly attested by the witnesses marginally† named, the two first of whom not having been inserted in the calendar, were summoned by this court.

† Sham Beharry Lall.
Toolsee Lall Putwarry.
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On the 22nd November, a petition was presented to the magistrate by Abool Hussein and Muhboob Allee, mookhtears of Jhotee Misser, one of the malicks of Gungour, with which were filed four Hindustanee letters, purporting to have been written by Mr. G. Collis, the manager of the Bulwah factory. The first,

* Extract (paragraphs 2, 3 and 4,) from the register of the Nizamut Adawlut to the sessions judge of Tirhoot, No. 411, dated the 29th April, 1854.

2. "The Court observe that the three cases of riot attended with the murder of Fuqueerchand, which are entered in statement No. 6, should have been disposed of in one trial."

3. "The Court request that whenever there may be more matter than can conveniently be transcribed in the 1st, 2nd and 3rd pages of the lithographed forms of statements, Nos. 6, 8 and 10, you will instruct your writer to insert the requisite number of additional sheets between the 2nd and 3rd pages of those forms, stitching the whole up in the form of a book and then inserting the cases."

"In part three of statement No. 1, *ten* persons are entered as having been sentenced to three years' imprisonment, and *one to two* years, but as statement No. 6, shows *eleven* prisoners to have been sentenced to three years and *none* to two years, the Court request that you will explain the discrepancy."

Extract (paragraphs 2 and 3,) from the sessions judge of Tirhoot to the register of the Nizamut Adawlut, No. 87, dated 16th May, 1854.

2. With reference to the Court's observation that "the three cases of riot attended with the murder of Fuqueerchand should have been disposed of in one trial," I beg to explain that the three cases were not so tried, owing to their having been separately committed with separate calendars in the three different months of December, 1853, and January and February, 1854."

3. "Regarding the discrepancy pointed out in the 4th paragraph of your letter, I have the honor to explain that the entry in part three of statement No. 1, should be eleven prisoners sentenced to three years instead of ten to three and one to two years' imprisonment, and my office copy having been so corrected, I beg the favor of your making the necessary emendation in the return submitted to the court."

From the register of the Court of Nizamut Adawlut to the sessions judge of Tirhoot, No. 462, dated the 23rd May, 1854.

"The Court, having had before them your letter No. 87, dated the 16th instant, and referring to your 2nd paragraph, direct me to state that persons committed on different dates and entered in separate calendars, may be tried altogether and disposed of in the returns as one case."

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dated the 4th September, addressed to Maharaj Misser, Nehallee Rawoot and others of the prisoners, requires them to attend at the factory. The second, dated 6th October, to Ramsahye Jemadar of the factory, directs him to cultivate as many more than 300 *beegahs* of land with indigo as possible, and as there were plenty of peadas to send forty able-bodied laborers with them to the factory daily, and directing him with 200 laborers in mouzah Gungour in the employ of the factory to uproot the produce of 300 *beegahs* of land by force. The third, dated 8th October, to Ramsahye Singh (jemadar) orders him to portion out land to the ryots for the cultivation of indigo. The fourth, dated 11th October, to the same jemadar, directs him to report daily at the factory the quantity of land forcibly sown.

Seven persons being sent up as eye-witnesses for the prosecution, all of them* deposed in this, as they had done in the foudjary court, to seeing the prisoner, Nath Dass (No. 8,) in the riot and hearing him give the order, and the first six of those witnesses gave similar testimony in regard to the prisoner, Maharaj Misser (No. 9.)

* No. 1, Sheikh Peeroo.
2, Bhulkee Khawas.
3, Ramsahye Singh.
4, Sheikh Koodrut.
5, Rajbunsee Singh.
6, Fukeerah Dosad.
7, Jysee Singh.

The first five too of the above witnesses clearly deposed, as they had done in the foudjary court, to seeing the prisoners, Gheena Koeree (No. 10,) Nehallee Rawoot (No. 11,) and Nun-koo (No. 12,) strike the deceased, Fuqueerchand, viz., prisoner (No. 10,) a blow with a *lattee* on the left thigh, prisoner (No. 11,) a *lattee* blow on the right cheek and prisoner (No. 12,) a *lattee* blow on the back.

At least four of the above seven witnesses, deposed both in this and the foudjaree court to seeing the prisoners Boochye (No. 18,) Bustee (No. 14,) Munoorut Misser (No. 15,) Mokung Pasban (No. 16,) Sheikh Bholah (No. 17,) Halum Beg and Sheikh Fukeerah present and aiding and abetting in the riot. All the prisoners were satisfactorily identified each by more than two witnesses in this court. Most of the recognizing witnesses deposing to their recognition of the prisoners they pointed out, from previous acquaintance, and a few from their general appearance.

The witnesses to the mofussil inquest on the body of the deceased, Fuqueerchand, deposed to its exhibiting a mark of a *lattee* blow, like a scratch on the forehead over the right eye-brow; another swollen mark of a *lattee*, black and blue, under the right eye-brow extending to the lower part of the cheek. One *lattee* blow, black and blue, over the left shoulder, a mark of a *lattee* blow, black and blue, below the shoulder on the back, and another blow of a *lattee*, on the back and several other marks of blows and bruises.

The medical officer, Dr. Simpson, who had examined the body

and wounded men, when sent in to the station, deposed that the former exhibited the following appearances. "The scalp on the crown of the head and right temple more swollen and livid than the surrounding parts, and underneath the scalp there was extravasation of blood and fracture of the skull commencing above the right temple, one fissure running backwards and the other down the temple to the base of the skull within the fractured portion, about three ounces of extravasated blood were found compressing the brain. It appears to me that the above injuries had been inflicted by a blow with a *lattee*, or some such weapon over the right temple and there can be no doubt death ensued from those injuries in three or four days."

"I also examined the wounds of two persons, named Ram-sahye and Sheikh Koodrut, the former had five or six slight blows apparently from a *lattee* on the arms and body of several days standing, and the latter had also received five slight blows on the body, hand and arms. None of the above injuries received by either of those persons were severe."

All the prisoners pleaded both in the foudjary and this court *not guilty*, and eight of them urging in their defence, that they had been implicated by the planter in revenge for their not cultivating indigo, and three of them that they belonged to another village, and had no connexion with mouzah Gungour; all twelve attempted to prove their innocence by an *alibi*, which however was not established.

The *futwa* of the law officer convicting the prisoners, Nath Dass (No. 8.) and Maharaj Misser (No. 9.) of being the instigators and ringleaders of riot attended with culpable homicide and wounding, and the remaining prisoners of riot attended with culpable homicide and wounding, pronounces them liable to discretionary punishment by *tazeer*.

Whether or not the four Hindustanee letters were, as they purport to have been, really written by Mr. Collis of the Balwah factory, they have been denied by him in a petition presented to this court by Mr. Collis, and the signature of his initials upon them, to all appearance written with a shaky and tremulous hand, does not seem to me to correspond with that on the other Hindustanee notices to the thannah which, signed by Mr. Collis, are on the record.

Referring too to the date, *the 22nd of November*, in which those letters were first filed in the magistrate's court, it is observable that the answers of two of the prisoners, Maharaj Misser (No. 9.) and Nihalee Rawoot (No. 11.) were taken down in that court on the *26th October*, in which, however, they said not a word of any such letters. Now the object of the production of all these letters was to shew, that the factory had been forcibly cultivating indigo and was in fact the cause of the riot, and as above shewn, there had long been bad feeling between

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the factory and malicks of Gungour, it seems strange and unaccountable, supposing these letters to have been *bond fide* written, that earlier advantage was not taken, however those not addressed to them came into the possession of the prisoners, and that they did not at once produce them both to exculpate themselves and to implicate their opponents.

Considering the evidence of the witnesses adduced for the prosecution to be satisfactorily conclusive of the guilt of all the prisoners, and concurring in the finding of my law officer, I have sentenced the prisoners to various degrees of punishment commensurate to their share in the affair.

Sentence passed by the lower court.—Prisoners Nos. 8 and 9, to be imprisoned with labor and irons for the period of seven (7) years; Nos. 10, 11 and 12, each to be imprisoned with labor in irons for the period of five (5) years, and Nos. 13, 14, 15, 16, 17, 18 and 19, to be imprisoned without irons for three (3) years; and each to pay a fine of Co.'s Rs. 50 on or before the 10th April, 1854, or in default of payment to labor until the fine be paid or the term of sentence expires.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.)

Mr. A. Dick.—The evidence for the prosecution satisfactorily proves, that the deceased Fuqueerchand, and the jemadar Ramsahye, and the peadah Koodrut, while urging on a zillahdar superintending the ploughing of some fields in mouzah Gungour, were opposed by the prisoners, and desired to go away and abstain from ploughing for indigo, and on their remonstrating were attacked and beaten; and that Fuqueerchand was attacked first and beaten most severely. It is not in evidence how he got home. On the 17th, third day after the affray, he, Fuqueerchand was carried from his home in a litter to the factory of the indigo-planter, his master, a distance of about a mile; and his deposition taken. He could speak only in a whisper, yet the wounds and bruises did not appear severe. He was not therefore sent in to the magistrate till the fifth day after the affray, when he had died.

No assemblage on the part of the planter is in proof. The defence, attempted to be set up, is that the whole story of a riot is a fabrication; that the letters of the planter to the darogah, and to the magistrate, dreading an affray from the assemblage of dozens of rioters by the malicks of Gungour, dated the very day of the affray; and the receipt of the planter's jemadar to the burkundauze deputed to stop any affray, given on the 17th, declaratory of no affray having occurred, together with the slight injuries apparent on the body of the deceased Fuqueerchand at the time of the *sooruthal* or inquest, prove that no affray did take place, and that the deceased must have had his skull fractured after the inquest was made. There is not, however, the least attempt to

prove the latter allegation, and the letters of the planter only prove that he dreaded a serious affray, and yet was reckless enough to send his dependants to plough lands in the village, and to insist upon so doing in defiance of a host of rioters opposed to them. The receipt given by the jemadar is admitted to have been false, by the burkundauze, who got it, and the mohurrir to whom it was delivered; and the jemadar in acknowledging it, declares he was obliged to give it.

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I cannot avoid animadverting on the extreme impropriety of the planter taking a *theeka*, or farm of a small share of a joint estate, for the purpose of cultivating indigo; with the knowledge that he would be opposed by the other malicks joint-shareholders; as has been repeatedly asserted in the course of the proceedings, and never denied. I concur with the *futwa* and with the sessions judge in convicting the prisoners, and would confirm the sentences passed on them, respectively, by the sessions judge, in proportion to their several degrees of guilt.

Mr. B. J. Colvin.—It has been attempted by the pleader for the prisoners in this case, to impute misconduct to the manager of the indigo-factory, and to show that they were suffering from his tyranny and oppression.

There is not enough in evidence to prove, which party was right or wrong as to the cultivation of the indigo, but this much clearly appears that indigo fields were being quietly ploughed by the factory people, and that the deceased and the two wounded men were attacked when they came to see what progress had been made. There was no shew of force on their part, but the sight of them seems to have excited the prisoners to the violence which they committed.

I hold it to be clearly established that the death of the deceased was owing to the beating he then got, and that the two other men were beaten also. The sessions judge has in his remarks shown the part taken by each prisoner as deposed to him in the evidence. This evidence is independent of that of the declaration of the deceased, which, as taken, can scarcely be received as such, for the mohurrir deposes that he took it down from the darogah, who repeated it as he heard it feebly given by the deceased, the mohurrir himself being ignorant of what the dying man was relating.

I concur with Mr. Dick, in rejecting the appeal and affirming the sentence passed upon the prisoners.

PRESENT:

J. DUNBAR AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT AND TWYONG,

versus

Arracan. PADOO (No. 1.) BOOJEE (No. 2.) CHANDAONG (No. 3.)
AND SHOOAITHA (No. 4.)

1854.

May 30.

Case of
PADOO and
others.

CRIME CHARGED.—River dacoity with murder of Ongthagyan and plunder of property valued at 137 Rs. on the 12th day of the waxing moon Pyatho 1215 M. S. corresponding with the 10th January, 1854.

Committing Officer.—Capt. G. Faithfull, principal assistant commissioner of Akyab.

One prisoner sentenced capitally and two others sentenced to transportation for life on conviction of river dacoity attended with murder. The prisoner sentenced capitally confessed that he shot the murdered man.

Tried before Captain Henry Hopkinson, commissioner of Arracan, on the 30th March, 1854.

Remarks by the commissioner.—The case was committed by Captain G. Faithfull, principal assistant to the commissioner of Arracan, on the 9th January, 1854.

The prosecutor Twyong, a young Arracanese merchant, residing in the town of Akyab accompanied by his brother, the deceased Ongthagyan, and No. 1, witness Shooaipoung, embarked some day in December last, in a five fathom boat from Akyab on a trading expedition into the interior of the district, having with them various descriptions of piece goods to the value in all of perhaps 700 Rs., the greater portion of this investment they disposed of among the villages situated on the creeks and *nullahs* to the eastward of Akyab, within a circuit of about fifteen miles.

On Monday the 9th January, they left the village Tulengthat, in the circle of Kiem Ashay Phet about 7 p. m., with the intention of returning to Akyab, and shortly after they arrived at the mouth of the Kiem Menggan Privan creek, where they found a boat similar to their own lying at anchor, and a little further on, two other boats under weigh; when they got about half way between these and the boat at anchor, the latter weighed and followed them, they continued their route and at last found that out of the three boats they had passed, one only remained in sight, this one was now rapidly approaching, soon it was within hail, and still nearing them, when it was scarcely a fathom off, one of its crew, crept forward to the prow and thence discharged a loaded carbine point blank at the deceased Ongthagyan, who was steersman of the prosecutor's boat; the unfortunate man received three slugs in the loins, and fell forward with a cry inside the boat; on seeing what had happened the prosecutor Twyong took his brother's place at the helm, resisting every attempt made by the dacoits to board him and gallantly main-

taining his post, though fired at three or four times, meanwhile a *slant* of wind caught the sail of his boat, and drove her ashore, and the instant she touched the ground he and the witness Shooaipoung jumped out taking their money with them, to the amount of Rs. 466-8 and got safe away into the jungles. The dacoits then came up, and ransacked the boat, obtaining property principally in piece goods to the value of about Rs. 137. All this occurred after mid-night of the 9th or about 3 or 4 A. M. of Tuesday the 10th January. The prosecutor and Shooaipoung made the best of their way to the nearest village (Wet-ma-gya-rwa) and arrived there a little before day-light, they procured the assistance of the village officers and returned to their boat, they found the dead body of Ongthagyan lying in it, and they had it removed and sent into Akyab. The dacoits had cut the oars and masts and sails of the boat to pieces. Both the prosecutor and the witness Shooaipoung were present and saw the civil assistant surgeon examine the body of the deceased Ongthagyan. They could not either of them, state the number of dacoits they were attacked by, nor could they identify any of the prisoners, but they identified all the plundered property produced by the prisoners or found in their houses.

The foregoing account of the case has been compiled from the evidence of the prosecutor Twyong and the witness to the fact No. 1, Shooaipoung, who accompanied the prosecutor and the deceased Ongthagyan as a rower in consideration of a share in the profits, and as both the prosecutor and the witness tell exactly the same story, I have thought it unnecessary to give their statements separately.

The evidence of Shooaitoong witness No. 2, is the most material as to the circumstances attending the apprehension of the prisoners. This witness who is the keok or tasildar of the circle of Loung-gret As-hay-phet, within which the dacoity was committed, relates that he received notice of the arrival of the magistrate of Myoung-pway-zurat which is within his circle, on the 16th January, and immediately attended on him and received instructions to enquire into the dacoity, he entered upon the investigation accordingly by proceeding to look after the prisoner No. 3, Chandaong, whom he knew to be hanging about the place without any fixed abode; when he found him, he asked him where he had been for the last ten days, he, Chandaong, declared he had been no where, but the persons with whom he lodged contradicted him and witness discovered he had been absent for some days with Padoo (No. 1,) and Boojee (No. 2;) witness and the darogah who was with him, then took him into custody, and at the same time effected the apprehension of prisoners Nos. 1 and 2, Padoo and Boojee, the latter was from home engaged in building a pagoda; pursuing their inquiries through the village the

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confessary thereupon found means to enter her house and robbed her of seven tickles of gold, of this he gave one tickle to his informant Chaureepway, one tickle also to the Phandee mohurir who apprehended him on suspicion of his being concerned in the robbery, and two tickles to the Keok Shooailoon, so he made only three tickles by the business. Another time he, confessary, paid a visit to the Kyoungtuga Moung Guyeng's house at Pyengtoung at night to rob it, but succeeded only in getting hold of a diamond ring, a brass key chain and ten rupees, these Chaureepway received as hush money, and the Keok Shooailoon getting hold of the story cheated him out of the ring. At Mahatee also last December, 1853, hearing that the widow of the Mahatee Keok was possessed of much property, the confessary robbed her and got four tickles of gold and a pair of silver armlets. Now lastly as to his share in the present transaction, he says that the witness Isanreepway first told him of the deceased Ongthagyan's arrival at Myoungpwe, having with him about 1,500 Rs. in cash, adding, that if he had any doubts he might go into the town and meet Ongthagyan, confessary went, found out Ongthagyan and noticed that he had a bag with him, but could not discover whether the contents were silver or pice, but he saw besides that Ongthagyan had about 400 Rs. in cash, and he believed therefore what Chaureepway had said, thereupon he, Shooathai, went to his house, and conferred with prisoners Nos. 1 and 2, Boojee and Padoo, and arranged the plan for robbing Ongthagyan, telling them to go and hire a boat, they tried at first to get one in Myoungpwengzay, but could find none to hire; however that same night came to them the Rwagong Chaureepway, who on learning that they had not got a boat, managed to persuade a person of the name of Roukpway to hire them one, he Chaureepway standing security for its safe return. They thus got the boat on Friday, prisoner No. 3, Chaudaong joined them, and they all four started on Saturday the 7th January, they were at the mouth of the Kiem Khyoung on Monday the 9th January, and the same evening the deceased Ongthagyan, and the prosecutor Twyong passed them in their boat, when they unmoored and went in pursuit; in the course of the night, the two boats arrived at Wet-mha-gya creek, the deceased Ongthagyan was steering prosecutor's boat and about two fathoms ahead of the other, which was steered by the confessary; confessary here gave the helm to Paddoo prisoner No. 1, and went out to the head of the boat, and with the carbine produced in court (chulan No. 4,) which was loaded with three bullets, fired at Ongthagyan who fell forward, as if wounded, into the boat. Then the prosecutor came out and took the helm, confessary reloaded his piece and fired at him but missed, he then put aside the carbine and taking up a long sword or *dhalway* tried to board the prosecutor's boat, but did

not board it, the boats now got separated and confessary fearing that prosecutor's boat might get off altogether, discharged his carbine at it again three or four times, but without effect, at last prosecutor's boat went ashore, two men jumped out of it and ran into the jungles, and immediately after it was boarded by the confessary and his gang, there was no one left in it but the body of Ongthagyan, they ransacked the boat but could not find a single rupee in it, only some piece goods from which they selected and carried off what was of value and left what was worthless behind, they then decamped intending to go and dispose of their plunder at Dulet, but considering on the road that a prolonged absence from their village would lead to their being suspected as soon as Ongthagyan's death was discovered, and that in their own village the Keok and Rwagong would not apprehend them, they first hid the plundered property in Dubroo-toung hill, and then went to their homes.

After consideration of the evidence, of the confessions made by the prisoners Nos. 1, 2 and 3, before the magistrate, and with reference to the statements made by those prisoners, and what they have urged in their defence in the sessions court, with reference also to the full confession of prisoner No. 4, Shooaitha before the sessions court, I convict the four prisoners, to wit, the prisoner No. 1, Padoo, the prisoner No. 2, Boojee, the prisoner No. 3, Chandaong, and the prisoner No. 4, Shooaitha, of river dacoity attended with the murder of Ongthagyan and plunder of property valued at Rs. 137, on the night of the 9th, or the morning of the 10th January, 1854, and I would recommend the prisoner No. 1, Padoo, and the prisoner No. 2, Boojee, and the prisoner No. 3, Chandaong, to be sentenced to be imprisoned and transported for life. For the prisoner No. 4, Shooaitha, seeing that he stands by his own confession the actual murderer of the deceased Ongthagyan and looking to the enormity of the crime, and the cold-blooded and deliberate manner in which it was perpetrated, I cannot do otherwise than recommend a capital sentence.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The confessions of the prisoners, before the magistrate and before the commissioner, are full and complete in all particulars, and are supported by the production of the stolen property, pointed out by three of them, and the discovery of the carbine used by prisoner No. 4, near the house of prisoner No. 2. Under these circumstances it is impossible to entertain any doubt of their guilt, or of the prominent part taken by the prisoner No. 4, in the murder of Ongthagyan and his repeated attempts on the life of the prosecutor while they were in pursuit of the boat. We, therefore, concur in the view of this case taken by the commissioner and in his opinion as to the punishment to be awarded, and sentence the prisoner Shooai-

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1854. tha No. 4, to suffer death and Padoo No. 1, Boojee No. 2, and
 Chandaong No. 3, to be transported for life.

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PRESENT :

J. DUNBAR AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT,

versus

Tenasserim.

JAGEEAH.

1854.

CRIME CHARGED.—Wilful murder of Juggamah by inflicting wounds on her with a knife or some sharp pointed instrument, on the 8th November, 1853, of which wound she, the said Juggamah, died on the morning of the 20th November, 1853.

May 31.
 Case of
 JAGEEAH.

Committing Officer.—Captain J. C. Haughton, magistrate of Maulmain.

Prisoner convicted of the wilful murder of his concubine and sentenced to capital punishment. The deposition of the wounded woman taken when she knew herself to be in a dangerous state, but not amounting to a dying declaration, should have been taken on oath.

Tried before Lieut.-Colonel Sir A. Bogle, commissioner, Tenasserim and Martaban Provinces, on the 18th May, 1854.

Remarks by the commissioner.—The case is not one that requires much notice from me. The deceased was the concubine of the prisoner, they quarrelled frequently, and at last the deceased and her mother became so much alarmed at his threats, that they avoided sleeping at home.

The next morning as they passed their door, where the prisoner was sitting, he seized the deceased and dragged her into the house, and having pulled a knife from under the bedding, stabbed her in several places, and of these wounds she afterwards died.

The testimony of the witnesses and the dying declaration of the deceased, taken by the magistrate, and attached to his proceedings, leave no doubt whatever as to the guilt of the prisoner who, although indisposed to confess, declined making any defence. The jury therefore found the prisoner guilty of the crime charged and I, concurring in the propriety of this verdict, have found myself under the necessity of sentencing him to be hanged.

I now respectfully solicit the orders of the Sudder Nizamut Adawlut upon the case.

Prisoner pleads *not guilty*.

Jury.

H. Whittain.

Mahomed Ghose.

Moonecapa.

Moung Youk.

Moung Hike Tsou. }

Duly chosen by lot and not challenged by the prisoner when asked if he has objections to state to a y of the five, make solemn affirmation.

1st witness for prosecution.—Incoma wife of Suhmay, aged forty-five, resident of Maulmain, on solemn affirmation states, the prisoner Jageeah is well known to her, he was the driver of my cart, he lived as man and wife with my daughter Juggamah, at first he went on all very well, but afterwards he got into debt and wanted my daughter and myself to pay his debts, this we refused to do, but offered to give him 50 rupees and to send him back to his country; but to this he objected, and threatened to kill my daughter; this was the night before the murder; but for a month before they were always quarrelling; when he threatened violence I went and reported to the Goung who sent for the prisoner and asked him if it was true that he had threatened to kill the deceased, he replied that she was his wife and that the accusation was altogether a false one. The Goung then told him to take his wife away and not to cause any disturbance, I was afraid to go home so I and my daughter, the deceased, went and occupied an empty room in the house of Gopaul Kishen and slept there until morning out of fear of prisoner. In the morning about half-past six o'clock, about five months ago, I and my daughter went to answer the calls of nature, behind the house, we then saw the prisoner sitting at the door of my own house washing his face, he said nothing at that time, but on our return from the jungle, as we were passing by the place where prisoner was sitting, he rose up and laid hold of my daughter Juggamah by the hair of the head and drew her into the house and then he put his hand under his bed and drew out a knife, with which he then stabbed her, but before he struck her, my daughter begged for mercy, and promised to live with him for ever, but he would not listen to this and struck her, I tried to separate them but he wounded me on the right hand with a knife; he inflicted six blows on my daughter, he then wanted to stab himself, but we begged of him not to do so, he then ran away towards the jungles and I did not see him again till he was brought back by the police; one Emam Sahib and Subroyah were in the compound or near at hand, and saw the deceased fall down wounded, and may have heard cries, but they were not in the house and did not see the wounds inflicted. After the deceased was wounded she tried to leave the house but fell down outside, and was taken to the hospital, where she died thirty days afterwards. I am quite sure it was the prisoner who wounded her, I know him well and have known him for six years. The broken knife before the court is the one prisoner used, it was found in the house by the magistrate, has heard so. Never saw the knife before the assault, it did not belong to the house, and the prisoner must have brought it from some where. Has no doubt as to the prisoner being the man who wounded her daughter.

The prisoner and jury have no questions.

2nd witness for prosecution.—Emam Khan son of Hyder

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Khan, age forty, a Mahomedan trader, resident in Maulmain, makes solemn affirmation and states that he knows the prisoner, he was a tenant in my house at Nayabustee, Maulmain; I also knew Juggamah, deceased, she lived with the prisoner as his wife, she was daughter of 1st witness. One morning a short time before the present magistrate arrived at Maulmain or about five months ago, I had just opened my door and saw two men running; I asked them what was the matter, they replied that the prisoner had stabbed his wife and they were going to the Goung. I went to see and found deceased lying in front of the house in which prisoner lived weltering in her blood, I then went and reported this to the constable Mr. Neville; the woman was stabbed in several places, she was senseless, people said it was the prisoner Jageeah who had wounded her. Nearly a year before the assault I turned prisoner and his concubine deceased out of my house, for they were always quarrelling, I have known them for several years, they were both bad.

Prisoner and jury have no questions.

3rd witness for prosecution.—Eman Khan alias Daod Kal, son of Sarawundee resident of Maulmain a labourer, makes solemn affirmation and states that he knows the prisoner, has known him for about a year, also knew his concubine deceased; about five months ago, got up one morning and was going out to answer the calls of nature when I saw the deceased Juggamah and her mother, 1st witness, going before him so waited till they came back. As they returned they had to pass the prisoner's door, when they got near it, prisoner laid hold of deceased by the hair and dragged her into the house, on this I went on, and on my return I saw the deceased lying in front of the door bleeding. I also heard the old woman crying out, My daughter! my daughter! When I saw the prisoner dragging the girl into the house I did not suspect any thing serious, they were in the habit of quarrelling, I did not see the prisoner when I saw deceased lying bleeding, did not search for him, but ran at once to the Goung and reported what had happened. Saw 1st witness there sitting near her daughter crying, did not see any one else, did not hear who had stabbed the deceased, she was taken to the hospital and died there some days afterwards.

Prisoner and jury have no questions.

4th witness for prosecution.—John Andrew Reynolds, civil surgeon, Maulmain, having been duly sworn states. I remember a woman named Juggamah being brought to hospital on the 8th November last, having received several wounds. I saw her soon after her arrival and found that she had received several wounds on the arms and side, one of which had broken the rib and penetrated into the lungs, this wound was fatal, and in consequence of it she died on the 20th November; she appeared to be a healthy woman, but had suffered much from loss of

blood, and again some days afterwards she lost much blood from the wound in the lungs. I consider that she died of inflammation of the lungs and loss of blood caused by the wound received. The knife before the court would have made such wounds, they were caused by some instrument like this knife. I saw nothing else to have caused death but the wounds. I opened the body and found that the lungs had been pierced by a sharp instrument.

Prisoner and jury have no questions.

5th witness for prosecution.—Mirza, police peon, son of Hussain Beg, age fifty, makes solemn affirmation and states, I remember the day Juggamah was stabbed, it was nearly six months ago in the morning about 6 o'clock. I went with the constable and magistrate to the house, and there we found the wounded woman and her mother who was also wounded on the hand, I got a carriage and conveyed them to the hospital, on looking within the house, the magistrate, Captain Hamilton, found a knife in two pieces, it is now before the court. I recognize it perfectly, it was covered with blood. The prisoner lived in that house, there was much blood all about the doorway both inside and out. (The court finds the knife to be ten inches long and $1\frac{1}{2}$ broad, straight and with a sharp point). The prisoner is a cart-driver, witness knows nothing about him, he was not present when witness went to the house, 1st witness said the deceased had been wounded by her husband, search was made for him, but he could not be found.

Prisoner and jury have no questions.

The dying declaration of the deceased Juggamah as taken by Captain R. Hamilton late officiating magistrate at Maulmain, is here read.

The prosecution is closed.

Defence.—The prisoner Jageeah, son of Inkama, having been called on for his defence states that he did not stab the deceased, but the witnesses are ill disposed towards him, he will not however dispute what they have said, he has in fact no defence to make.

The defence is closed.

Verdict of the Jury.—The jury find the prisoner guilty of wilful murder.

Opinion and sentence of the court.—In this verdict I entirely concur, and seeing no extenuating circumstance whatever in the case, nor any just cause why the extreme penalty of the law should not be inflicted, I sentence the prisoner Jageeah son of Inkama to be hanged by the neck until he be dead.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The evidence of the mother of the deceased and the depositions of the witnesses, who saw the woman lying in a bleeding state outside the house, corroborate,

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1854. in all essential particulars, the statement made by the deceased to the magistrate in the Hospital, and sufficiently establish the guilt of the prisoner. No reason is assigned by the magistrate for not taking that statement on oath, and had it been the only evidence against the prisoner it could not of itself have been sufficient for his conviction, as it does not bear the impress of a dying declaration, the woman having only stated that "she knew herself to be in a dangerous state," but this does not amount to a belief on her part that she was past all hope of recovery.

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We see no extenuating circumstance in the prisoner's case, entitling him to any consideration, and therefore concur in sentencing him to suffer death.

PRESENT :

J. DUNBAR, AND H. T. RAIKES, Esqs. *Judges.*

GOVERNMENT,

Nuddea.

versus

1854. MUDUN SHEIKH LATTIAL ALIAS GOLAMI SHEIKH.

May 31.

Case of
MUDUN

SHEIKH LATTIAL alias GOLAMI SHEIKH.

CRIME CHARGED.—1st count, wilful murder of Eshur Ghose, and 2nd count, riot attended with the murder of Eshur Ghose and the severe wounding and carrying away of Ram Soondur Ghose.

CRIME ESTABLISHED.—Riot attended with the culpable homicide of Eshur Ghose and violent assault on Ram Soondur Ghose.

Prisoner convicted of riot, attended with culpable homicide and violent assault; sentenced to seven years' imprisonment. Appeal rejected.

Committing Officer.—Mr. J. E. S. Lillie, magistrate of Nuddea.

Tried before Mr. A. Sconce, sessions judge of Nuddea, on the 1st May, 1854.

Remarks by the sessions judge.—The subject matter of this trial was once before under investigation, and the conviction of the prisoners first tried was reviewed by the Sudder Nizamut Adawlut, on the 28th February, 1853.

Early in the afternoon of Sunday, the 5th September 1852, a party of six men, who were proceeding from Mr. Hill's Kut-cherry in Meherpoor to bring back collected rents, were suddenly riotously attacked by a party of men on the part of Nub Kishto Baboo; Ehsur Ghose, one of Mr. Hill's people, was wounded and the same evening died of his wound. Ram Soondur Ghose, another of Mr. Hill's men, was assaulted with *lattees*, dropped, was carried off by the attacking party and has never since been heard of. This prisoner, Mudun Sheikh, is proved to have first struck Ram Soonder.

Prisoner in his defence says his name is not Mudun, but Golami; that three years since in consequence of Mr. Hill's ill-treatment, he had left his old home and taken up his residence in Nischenitapoor in the Moorshedabad district, so his witnesses support him, but his identification as Mudun Sheikh appears on the part of the prosecution to be amply proved.

Sentence passed by the lower court.—Imprisonment with labor and irons for seven (7) years

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The prisoner, when first questioned at the foudary, admitted his name to be Mudun Sheikh, *alias* Golami Sheikh, and the witnesses for the prosecution on the first examination distinctly declared, that Mudun and another had knocked down Ram Soondur, and when confronted with the prisoner, swore to his identity as the Mudun Sheikh referred to by them on their first deposition. We see no reason to interfere with the sentence passed, and reject the appeal.

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Case of

MUDUN

SHEIKH LAT-
TIAL *alias* GO-
LAMI SHEIKH.

PRESENT :

A. DICK, AND B. J. COLVIN, Esqs., *Judges.*

Patna.

GOVERNMENT,

1854.

versus

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BOOLAKE (No. 18.) AND MUSST. DOMNEE (No. 19.)

Case of
BOOLAKE and
another.

CRIME CHARGED.—Wilful murder of Musst. Panchoo *alias* Musst. Punchia.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 8th May, 1854.

Remarks by the sessions judge.—The prisoners, Boolake and Domnee, are charged with the murder of Punchia, sister-in-law of Boolake, under the following circumstances.

It is shewn in evidence that the deceased and Boolake lived in the same house on bad terms with one another, and that on the 18th February last, at about noon, he was seen beating and abusing her and dragging her by the hair towards their house, from whence she was endeavouring to escape. From that day she disappeared and Boolake gave out that she had absconded somewhere, but Jeelul, a Gorayet, witness No. 1, having heard it rumoured that some violence had been done to her, and that it was possible she might have been made away with, gave information at the thannah, and a search being thereupon instituted, the body of Panchoo was dug up in a cattle-shed within the premises of the prisoner's house, on the 11th March. Wit-

It being proved that the prisoner had maltreated the deceased, the finding of her body clandestinely buried in his house, was held to establish the crime of culpable homicide against him, there being no proof of his intent to murder, and no wound of any kind discernible on the body.

1854. nesses Nos. 7, 8 and 10, depose to the immediate recognition of the body by the by-standers as soon as it was exhumed, notwithstanding that great decomposition had taken place. When it reached the sudder station, the medical officer was unable to state the cause of death on account of extreme putrefaction. The evidence further proves that the body could not have been deposited in the place where it was found without the knowledge of the prisoner. For the defence, Boolake pleads an *alibi*, which is obviously false. The other prisoner, Domnee, states that the deceased died from the effects of eating opium, but does not know how she came to be buried in the cattle-shed. From the fact of Boolake and the deceased having been on bad terms previously, and also from the fact of her having been last seen with him suffering brutal treatment at his hands and being dragged towards the premises, from which her body was subsequently exhumed, there can be no doubt that he perpetrated the murder. Nothing is offered in defence that is extenuating or in any way explanatory, which under circumstances like the present, it is incumbent on the prisoner to make out, in order to justify the passing of a mitigated sentence.

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Case of
Boolake and
another.

I think that he ought to undergo the extreme penalty of the law and suffer death, and that the other prisoner, Domnee, as an accessory after the fact should be imprisoned for life with labor suited to her sex.

The *fulwa* of the law officer finds *Kutul Shib Amad*: evidence to the fact being a '*sine quâ non*' under the law of the Mahomedans.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) There is no proof to sustain the charge of murder in this case. The evidence for the prosecution only establishes that the deceased was seen by several witnesses to have been maltreated and dragged into his house by the prisoner with whom she lived, and that she was never seen subsequently, and lastly, that a woman's body was found buried within his, prisoner's, house and recognized by some of the witnesses. The inference is therefore very strong, that prisoner by his maltreatment of the deceased killed her, although not intending her death and dreading the consequence buried her within his own house. There is no evidence against the female prisoner Domnee, beyond her own confession of having seen the deceased dead. In concurrence with the *fulwa* of the Mooftee of this Court, we convict the prisoner Boolake of culpable homicide, aggravated by concealing the body of Musst. Panchoo alias Punchia, and sentence him to five years' imprisonment with labor in irons. We acquit Domnee and order her release.

PRESENT :

J. DUNBAR AND H. T. RAIKES, Esqs., *Judges.*

MUSST. PHOOLEEAAH AND GOVERNMENT,

versus

HARILAH RAJPOOT (No. 1.) AND SUKLAH RAJPOOT
(No. 2.) KHUGOOAH (RELEASED BY THE LOWER COURT.)

Hazareebagh.

1854.

CRIME CHARGED.—1st count, the defendant, No. 1, on committing a rape upon the person of the prosecutrix, Mussumut Phooleeah; 2nd count, the defendant, No. 2, aiding and abetting in the above crime.

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Case of
HARILAH
RAJPOOT and
another.

Committing Officer.—Moonshee Dubecrooddeen, deputy magistrate of Burhee.

Tried before Major J. Hannyngton, deputy commissioner of Chota Nagpore, on the 26th April, 1854.

One prisoner
convicted of
rape sentenced
to seven years'
imprisonment.
Another prisoner
convicted of
aiding and
abetting
in the crime;
sentenced to
five years' im-
prisonment.

Remarks by the deputy commissioner.—The prosecutrix states that on a Wednesday, in the month of Magh last, at noon-day, she was gathering cow-dung for fuel in the jungle at the distance of a mile from the village of Goomo in company with Sukari, and Budhni and Bhotni. While she was stooping to put the fuel in her basket, the prisoners, Khugooah, Suklah and Harilah, together with Dulia and another Khugooah boy, came, and of the three persons, Khugooah took a string from his wrist and Harilah seizing her hands, Khugooah bound them behind her back they then by threats drove away her companions, and took her by force to a low place in the jungle, where Harilah and then Suklah had connexion with her, while Khugooah held a cloth on her mouth, just then Seebah and Akla came up and the prisoners fled. These men brought her home, and information was immediately given to the village watchman and to the farmer, who said he could not interfere. Prosecutrix has made a written petition, the writer of it was Radhakishen, who is now present as a juror. He read the purport of it to her. The deputy magistrate did not take her deposition at the time she presented her petition, he sent her to the police station, and when she was sent back, he took it. The petition was written at Burhee. This is it,—though Harilah only is therein accused of the rape, yet it is true that both Harilah and Suklah had forcible connexion with her. First, Harilah, then Suklah, then Harilah again. At the time of this occurrence, she had been living in her father's house, since Bhadon last; the distance from her husband's home is about eight miles. Her husband was absent driving laden bullocks, therefore she stayed with her father, she is still in her father's house, because her husband will not receive her again, she had previously been in co-habitation with him. There was no dispute with the prisoners about gathering pulse.

1854. The prisoners plead *not guilty*. These witnesses,* state that
 May 31. * No. 1, witness Seebah. at noon, on a Wednesday in Magh,
 Case of „ 2, witness Ukul. while gathering wood in the jungle they
 HARILAH together discovered the prisoner, Hari-
 RAJPOOT and lah, in the act of committing a rape on the person of the prose-
 another, cutrix. The prisoner, Suklah, was rubbing her breasts with his
 hands, and Khugooah stopped her mouth with a cloth. The
 witness, Seebah, threw a stick at them, and the three prisoners
 fled. Suklah went to where some buffaloes were grazing and the
 witnesses followed and said, What have you done to the girl?
 to which the prisoner replied with threats, desiring them to be
 off. They then took her towards her home.

These witnesses† saw the prosecutrix immediately after the
 fact; there were marks of blood and
 † No. 3, witness Dookeah. of mud in her clothes. No. 6, wit-
 „ 4, „ Keharee. ness Sewah, is the grandfather of
 „ 5, „ Suburnee. the prosecutrix. Has no personal
 knowledge of the facts.

These are both children.‡ They have just sufficient know-
 ledge to understand that to speak
 ‡ No. 7, witness Bhoondia. the truth is better than to speak
 „ 8, „ Sookree. falsehood, and to state that they will
 speak the truth. They say that the three prisoners, Harilah, Suk-
 lah and Khugooah, seized and bound the prosecutrix and pushed
 her by the neck towards a low place in the jungle, and that they
 told the witnesses to go away which they did. No. 9, witness
 Bhodram Punde, states that the prosecutrix and her mother
 told him that the prisoners, Harilah and Suklah, had committed
 a rape on the prosecutrix. Witness saw marks on the clothes of
 the prosecutrix and told her that she should complain to the
 police, as the matter was very serious.

No. 10, witness Kunchun Chowkeedar, was told by the pro-
 secutrix and her mother of the rape on the prosecutrix by Hari-
 lah and Suklah. Witness told them to inform the farmer of it.

The prisoner Harilah in his defence says that he is not guilty,
 and his witnesses will prove that there was a dispute about
 gathering pulse.

The prisoner, Suklah, in his defence says that he is not guilty,
 and that the prosecutrix and five other girls were trespassing
 in a field of pulse, which he forbade them to do. Wherefore
 this false complaint has been got up.

The prisoner Khugooah in his defence says that he is not
 guilty, and that this accusation has been got up because he
 forbade the prosecutrix to trespass in a field of pulse.

For the defence.—No. 12, witness Takree states that on a
 Wednesday in Magh, the prosecutrix with Sukri and Budhni
 were gathering the green plants of pulse in a field and the
 prisoners Harilah, Suklah and Khugooah, who were herding

buffaloes at that place, took the green plants from them and Harilah and Suklah struck the prosecutrix two blows with shoes. The field belongs to these prisoners. The charge of rape was made two or three days afterwards.

No. 13, witness Bhutoah, states as the last witness excepting as to date, which he is positive was in Aghun last.

No. 14, witness Jhugur Singh. One day in Magh at noon witness saw the three prisoners take green pulse from the prosecutrix and some other girls.

No. 15, witness Sectoo. To the same effect, but names only the prisoners, Harilah and Suklah.

Some other witnesses speak to the previous good character of the prisoners.

The jury,* whose names and occupations are entered below, find the prisoners guilty as charged.

I consider that the offences charged are fully proved against the prisoners, Harilah and Suklah. The evidence undoubtedly shows that the boy Khugooah also aided the offence, but his extreme youth (12 years) leads me to conclude that he was ignorant of the gravity of the crime, and that he was entirely guided by the elder prisoners.

There are some discrepancies in the several examinations of the prosecutrix, but it is not certain that the case has been faithfully dealt with, either by the police or by those who have advised the prosecutrix, she has even been induced to enter a "*nolle prosequi*" which the regulation law does not admit. Her account of the matter, as given before this court, is possibly untrue as to the prisoner, Harilah, having *repeated* the offence but that he did commit the offence I do not, in the least, doubt. It is much to be regretted that the deputy magistrate did not take the deposition of the prosecutrix without delay. The prisoners, Harilah and Suklah, are men of superior caste, the prosecutrix is of nearly the lowest caste. For her, the native officials have no compassion, to injure her case they have no scruple. For the first time during a long experience, I have detected something like an effort to pack a jury, two† out of the three assessors had meddled with the case before it came into court. One was challenged during the examination of the prosecutrix and was immediately discharged. The others were then asked whether they had any interest in the case and they asserted that they had not. Yet it appeared afterwards that one of them had written the "*nolle prosequi*." When taxed with this, his apology was that it had escaped his memory. This man is a mokhtear.

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Case of
HARILAH
RAJPOOT and
another.

* Brij Loll Mokhtear.

Poonit Loll Ditto.

† No Verdict was taken from these.

1854. The defence of the prisoners is weak, and I attach no credit to it.

May 31. Finding the prisoners Harilah and Suklah, guilty, I recommend that Harilah be sentenced to imprisonment for seven years, and Suklah to imprisonment for five years with hard labor in irons. The prisoner, Khugooah, has been discharged.

Case of
HARILAH
RAJPOOT and
another.

Note.—The age of the prosecutrix does not exceed 13 years, if indeed it be so much. Her demeanour before the court was modest and she evinced much mental distress. It appears in the magistrate's record that she has not reached puberty, but she has nevertheless lived with her husband for some time. Such cases are not uncommon. This is one of the many social evils prevalent in this land.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) Although we consider there is no reason to doubt the truth of the girl's statement, that both Harilah and Suklah had forcible connexion with her, yet it is evident the deputy magistrate has considered the evidence only sufficient to support the actual commission of that crime against the prisoner Harilah, who was detected in the act by the two eye-witnesses. The other prisoner Suklah has therefore only been charged with aiding and abetting his associate. We concur with the deputy commissioner in convicting these two men of the crimes with which they are charged and sentence them as recommended, viz. Harilah to seven years' and Suklah to five years' imprisonment both with labor and irons.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT,

versus

RAM BEHAREE.

Moorshe-
dabad.

1854. CRIME CHARGED.—Wilful murder of his wife Woojal Awooruth.

May 31. Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Case of
RAM BEHAREE.
Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 3rd April, 1854.

Prisoner convicted of the wilful murder of his wife, sentenced to transportation for life.

Remarks by the sessions judge.—The prisoner pleaded guilty. From the evidence of the witnesses named in the margin,* it appeared that on the morning of the day of the murder, the witness No. 1, in company with No. 2, went to the house of the prisoner at Kadye and

* No. 1. Anund Bearer,
,, 2. Lalmoney Awooruth,
,, 3. Hullodhur Bearer.

asked for 5 Rs. which the prisoner owed to a *modhee* on account of provisions supplied to him. The prisoner said he had no money, and upon their desiring him to go and settle the account with the *modhee*, he refused to go for fear of being kept in confinement by him. The witness No. 1, then said that he had paid the money to the *modhee*, it only remained for the prisoner to go and settle the account. During this conference the prisoner's wife pressed him to go and settle the account. The prisoner upon this desired her to come with him, she refused, stating that she was a woman and it was not necessary for her to go. He then gave her a slap and immediately took a bamboo that was near and struck her with it, and she fell to the ground, calling out, whereupon the witnesses went to help her, and prevent him from beating her more, but the prisoner threatened to beat them and they ran away. He then gave his wife two more blows with the bamboo upon the head and fractured her skull, she died immediately after.

The prisoner admitted the confession he had made before the magistrate. That confession agrees with the evidence regarding the quarrel of the prisoner with his wife, and his striking her on the head three times with the bamboo, although his statement differs from theirs slightly in other respects, and their own statements differ a little from each other.

It cannot be gathered from the evidence of the witnesses, and it is not therefore proved that there was an intermission of time between the blows of the *latter*, that is, that he struck down his wife by the first blows, and then attempted to beat the witnesses, when they ran in to help her, and after driving them away returned and struck her again twice and killed her.

The way in which the witnesses gave their evidence at first, led me to suppose there was such an intermission, and it would have shown on the prisoner's part a more murderous intent, but in consequence of the differences in their statements in the magistrate's and the sessions courts to which I have alluded, I am inclined to believe that the prisoner's own statement on this point is true, and that the blows were given continuously and deprived her instantly of life.

There was no witness on the part of the prisoner.

The murder was committed within the military cantonment of Berhampore, and the body of the deceased was examined by Dr. J. H. Jones surgeon of the 7th Regiment, N. I. In his evidence he states that the injuries received by the deceased caused her death. There was one wound on the ear and two more wounds on the crown of the head, by which the base of the skull was fractured and the vessels about the base of the brain were ruptured.

The case was tried with the aid of the law officer, who in his *fatwa* considered the prisoner guilty upon his own confession

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Case of
RAM BRHA-
REE.

1854. before the magistrate, which he afterwards admitted in this court and declared him liable to "*kissas*."

May 31. The *lattee* weighed one *seer* and twelve *chittacks*.

Case of
RAM BHHA-
REF. The prisoner appears from the evidence to be a man of violent temper, and the act was evidently committed in a fit of passion. Although concurring with the law officer in his *fatwa*, that the prisoner by committing the act has rendered himself liable to capital punishment, yet under all the circumstances of the case and especially with reference to the absence of any proof of *premeditation*, I would recommend that he be sentenced to imprisonment for life with labor in irons in transportation beyond sea.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The guilt of the prisoner is clear, both on the evidence of the witnesses and his own repeated confessions. We accordingly concur with the sessions judge in convicting him of the murder with which he is charged. Giving the prisoner the benefits of the view taken of the murderous act, by the sessions judge, as to the fact of the blows, which deprived the unfortunate woman of life, having been given continuously and without any intermission, and regarding it as the result of the sudden provocation which he conceived his wife had given him, we sentence him, as proposed by the sessions judge, to imprisonment for life in transportation beyond seas.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs., *Judges*.

SHEIKH NAZIR AND GOVERNMENT,

versus

Mymensingh.

SHEIKH BHOLA.

1854. CRIME CHARGED.—Wilful murder of Dagoo Peadah.

CRIME ESTABLISHED.—Culpable homicide.

May 31. Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Case of
SHEIKH BHO-
LA. Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 10th April, 1854.

The prisoner's appeal was rejected upon his own admissions of guilt. *Remarks by the sessions judge.*—It appears from the record of commitment, the prisoner's admission, and the evidence taken on the trial, that the prisoner having owed some money to one Shooobul Roy Mahajun, he complained to the Rajah of Soosung, who deputed the deceased, a peon in his service, to call the prisoner; that the deceased accordingly proceeded to his village and having seized him was proceeding with him towards the residence

of the Rajah at Doorgapore when, having in the evening come near a *beel*, a scuffle ensued, on the prisoner attempting to escape, in which the deceased received some severe injuries which the civil assistant surgeon states caused his death. He desposes that he found the chest was bruised as also the lungs on the left side, six ribs on the left side of the chest were fractured and the right side of the head was also bruised, that these injuries must have been caused by severe and heavy blows with some hard instruments, or they might have been effected with the knees thrown heavily on the chest, and that the man would probably not survive 24 hours. The prisoner after the scuffle succeeded in effecting his escape, leaving the deceased near the edge of the *beel*. Next day, his corpse having been found lying at that place, witnesses* Nos. 1, 2 and

* No. 1, Noor Mahomed.
 „ 2, Shaheboollah.
 „ 4, Sheikh Buxshee.

4 and others went to the prisoner's house and asked him about the matter and he told them that as he

attempted to escape, the deceased caught him, when they both began to lay hold of each other, and in the scuffle he hurt him with his elbow, and as the deceased laid down he ran away. At the thanna and before the magistrate the prisoner admitted that as they came near the *beel*, on their way to Doorgapore, the deceased beat him and wanted his fees on account of the process the deceased had caused to be issued from the Rajah, and as he, the prisoner, endeavoured to escape, the deceased caught him and was hurt with his elbow. In this court he denied having assaulted the deceased and added that he told his villagers when they asked him about the matter, that a knock from his elbow might have hurt him, and he does not know how he died. He admitted before me his thannah and foudary confessions, when they were read over to him, and he named or examined no witnesses to his defence. There were no eye-witnesses to the assault, and the law officer on the prisoner's own admission convicted him of culpable homicide on strong presumption. I concurred in this verdict.

Sentence passed by the lower court.—To be imprisoned for the term of (5) five years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J., Colvin.) Having read the petition of appeal and the admissions of the prisoner, in the magistrate's and sessions judge's courts, and the evidence of the civil surgeon, descriptive of the severe injuries sustained by deceased, we see no reason to interfere with the conviction and sentence in this case.

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 Case of
 SHEIKH BHO-
 LA.

PRESENT :

A. DICK, AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT AND HEDAETOOLLAH,

versus

ZUHEER.

Backergunge.

1854.

May 31.

Case of
ZUHEER.

CRIME CHARGED.—Wilful murder of Musst. Deteah, who was wounded on the 18th of March, 1854, at about 12 o'clock at noon, and died, at 3 o'clock on the night of the 25th of March, 1854, from the effects of the wound.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

The prisoner who killed his wife, but not premeditatedly, was sentenced to transportation for life, the crime being of frequent occurrence in the district.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 27th April, 1854.

Remarks by the sessions judge.—The deceased was the prisoner's wife. The prosecutor is the prisoner's father-in-law.

There were no eye-witnesses, but Mussumut Kudumee, witness No. 1, the prosecutor's second daughter and sister of the deceased, was close enough to inform herself how the affair happened. Her evidence is, that on the day of the occurrence the 18th March, the prosecutor and the prisoner had agreed to go together to work in their fields. Food having been prepared for them, of which they both partook, the prosecutor called to his son-in-law to proceed to work. The latter replied "Go on ahead, I will follow afterwards." Presently when the witness, was sitting with the prisoner's child at the *ghaut*, about twelve yards from the house, she heard the deceased abusing the prisoner in very low language for his laziness in stopping at home, and allowing his father-in-law to do all the labor of their fields alone. While the abuse was going on, the witness heard the sound of a blow, and the deceased at the same moment screamed out that her husband had wounded her. Witness ran to the house and saw the prisoner with a *dao* in his hand, and with it he inflicted a second wound on his wife in presence of the witness. Witness then seized his hand and took the *dao* from him. Whereupon he ran out of the house to make his

* Ruhimoolah and Phedoolah.

escape, but witness called out for help and the witnesses, Nos. 2* and 3, seized him, and took him to the house of witness No. 7, Gopal Halder. The deceased died of her wound eight days after its infliction, when it was thought time to inform the police of it.

The evidence of the witnesses Nos. 2, Ruhimoolah, 3, Phedoolah, 7, Gopal Halder, 8, Keamooddeen, 9, Shuriutoollah, and 10, Amecrooddeen Chowkeedar, corroborate the chief witness in all the main facts above stated. They also depose that the

prisoner when questioned on the subject, did not deny having wounded his wife, and that he in a manner actually admitted it.

The body was in too decomposed a state to allow of any minute examination, but the medical officer deposes that there was a wound on the head which fractured the skull, and he considered that its position was so dangerous, and the wound of such a severe nature, as to allow of little hope, that had the deceased even obtained the benefit of early medical aid, death could have been averted.

When the prisoner was seized by the police, he denied the charge and stated that on his return home from Shohy-lal, where he had been to collect some piee he had to receive from one named Tunnoo, he found his wife lying in a wounded state, but he could not tell how she became so.

He made the same statement before the magistrate. At the sessions he accuses the chief witness, Kudumce, with having inflicted the wounds of which the deceased died, in consequence of the latter having detected the witness in an intrigue. He pleads and names witnesses to prove, that he was absent from the village where the affair occurred.

His witnesses however fail altogether to establish his defence.

The law officer convicts the prisoner of wilful murder and declares him liable to *tazeer*.

A *dao*, weighing 9 *chittacks*, is certainly a murderous weapon. The part upon which the blow was struck, was the most mortal of the whole body; applied with any force a blow over the temple with such an instrument could hardly fail to cause death and the blow was repeated. Death having been caused, under such circumstances, the crime of which the prisoner stands guilty, is decidedly that of wilful murder. But it was committed under great provocation from repeated gross abuse of the most irritating kind. The weapon it is certain was in the house, perhaps it was close at hand, and it might be that it was actually in his hand at the time. The fatal blow was struck while the abuse was being given, and there was no time or opportunity to meditate. It is proved also that the prisoner and his wife lived in concord. These are mitigating circumstances, which reduces in degree the criminal nature of the act proved against the prisoner, and I think it will satisfy the ends of justice if he is sentenced to 14 years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) It is clearly proved that the prisoner, in consequence of some abuse given to him by his wife for his laziness, in not going to work with his father-in-law, struck her over the temple with a heavy *dao*, then struck her again on the back and fled. The blow on the temple was so severe as to fracture the skull, and the wounded woman lingered till 8

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days, when she died. The surgeon describes the wound to have been so severe, that he thought it would have been fatal, even if proper medical aid had been afforded. The *futwa* convicts the prisoner of murder, on violent presumption, as does the sessions judge. The Court concur in convicting him of murder, though not premeditated, and sentence him, under the circumstances and the frequency of similar cases in the district, as noted by the *mooftee*, to transportation for life.

PRESENT :

A. DICK, AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT,

versus

BHOJOHUREE BYRAGEE.

Nuddea.

CRIME CHARGED.—Having belonged to a gang of dacoits.

1854.

Committing Officer.—Baboo Chunder Seeker Roy, deputy magistrate, under the commissioner for the suppression of dacoity, Hooghly.

June 1.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 25th April, 1854.

Case of
BHOJOHUREE
BYRAGEE.

Remarks by the officiating additional sessions judge—The prisoner, Bhojohuree Byragee No. 4, was committed by the deputy magistrate, under the commissioner for the suppression of dacoity, and is charged with having belonged to a gang of dacoits. He pleads guilty to the indictment.

The prisoner confessed throughout to having belonged to a gang of dacoits.

* Witnesses Nos. 1 and 2. The witnesses marginally* noticed are approvers on the establishment of the dacoity commissioner and prove the charge against the prisoner, showing his complicity in three dacoities committed at different times and in different places.

The prisoner confessed crime before the deputy magistrate, and admitted having taken part in five dacoities and seven at-

† Witnesses Nos. 3 and 4. tempts to commit dacoity. The record of his confession is attested

by the persons indicated in the margin.†

The prisoner makes no defence before this court.

I convict the prisoner, Bhojohuree Byragee, of having belonged to a gang of dacoits on his plea of guilty and the approvers' evidence recorded against him, and propose that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—Present: (Messrs. A. Dick, and B. J. Colvin.) We convict the prisoner on his own confessions before the deputy magistrate and the officiating additional sessions judge and on the evidence of the approvers, of having belonged to a gang of dacoits, and sentence him to imprisonment with labor and irons in transportation for life.

PRESENT:

J. DUNBAR, *and* •
H. T. RAIKES, Esqs., *Judges.*

SUMBHOO CHUNDER CHUCKERBUTTY, AND
GOVERNMENT,

versus

SHEIKH WARISH (No. 6,) ALEE MAHOMED (No. 7.)
Mymensingh. SHACHOONEE (No. 8,) SHEIKH KHODABUKSH
(No. 9,) AND SHEIKH NEAMUT (No. 10.)

1854.

June 1.

Case of
SHEIKHWARISH and
others.

CRIME CHARGED.—Wilful murder of Neelkant Surmah.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 3rd May, 1854.

Remarks by the sessions judge.—It appears from the record of commitment and the evidence recorded on the trial, that there existed enmity between the deceased and the prisoners, regarding some lands in the cultivation of both parties, and there had been several disputes between them about the matter; that on the 20th Poose, corresponding with the 3rd January last, the deceased went a short distance from his house to a place called Arragaon for the purpose of making collections from his talook, while his brother, the prosecutor, came to this station to institute proceedings under Act IV. of 1840, for dispossession against prisoners Nos. 7, 8 and 9, and their talookdar Kalee Shadoo; that as the deceased was returning home in the evening, he was waylaid by the prisoners and others near a *beel* called Barerah and there assaulted by them, with sticks and bamboos,* that the witnesses;† to the fact hearing a noise immediately came up to his assistance, when the parties ran off, and witness No. 1, then recognised prisoners Nos. 6, 8 and 10, who passed near him, while the two other witnesses recognised all the parties concerned in the attack upon the deceased.

* The bamboos mentioned by the witnesses in their evidence is meant for ruler.

† No. 1, Sheikh Nasir Mahomed.

No. 2, Sheikh Dhooloo.

No. 3, Sheikh Moghoo.

‡ Sheikh Needhun.

Shortly after, witness‡ No. 4, who was passing by, also came up and saw the prisoners beating some body and running away, the witnesses and others who joined them found deceased lying insensible and severely wounded and bleeding, and carried him to his house and endeavoured to revive him, and when he came to his senses a little he named the prisoners and Chundernath Thakoor and

* Vide evidence of witnesses Nos. 10 and 11, Chaud Dhohee and Doorgachurrun Mistree, as also that of No. 1, Nasir Mahomed.

Toofanee as the parties who had thus ill-treated* him, and from the effects of this beating he died on the night of the 23rd Poose while being carried to the than-nah. The eye-witnesses Nos. 1,

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2 and 3, and also 4, on account of the attack having been made in the evening, could not positively state who was most active in the assault, but their evidence is direct as to the prisoners and others (who were all armed with sticks and bamboos) being all concerned in the matter and whom they immediately recognised.

The civil assistant surgeon examined the body, when forwarded to the station, and he deposed in this court that, in his opinion, death was caused by congestion of the brain and spinal marrow; that there were bruises on the back of the head and in the lumbar region of the spine, there was also a small incised wound between the finger and thumb of the left hand, slight abrasions of the skin on both legs with a slight laceration on the inside of the right leg. The bruises on the back of the head and lumbar region of the spine, as well as the congestion of the brain and spinal marrow must have been caused by blows on those parts with some hard instrument. The congestion of the brain was produced by the blows on the back of the head, and that of the spinal marrow by the blows on the lumbar region of the spine.

The prisoners, before the magistrate and this court, denied the charge and pleaded enmity with the prosecutor and the deceased, regarding certain lands, &c., as the cause of their being falsely charged with the commission of the crime; that the deceased was of loose character and must have been served in this way for his improper conduct, and that the prosecutor has seized the opportunity to get them into trouble by getting his ryots and dependants to depose accordingly against them. No. 7, added that he was at witness No. 24's house, and some of the witnesses named by him stated that they saw him sitting there in the evening after night fall.

The law officer distrusts the evidence for the prosecution, on account of the witnesses being for the most part ryots and dependants of the prosecutor and the discrepancy in their evidence as regards some minor details; and that, although the *post mortem* examination, held by the civil surgeon, showed that death was caused from the effects of beating, there was not, in his opinion, sufficient evidence that the prisoners were concerned in the attack; that while the evidence of the prosecutor himself proves the existence of previous enmity, he has assigned no reason why the prisoners should have adopted the conduct with

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which they have been charged, and upon these grounds he returned a verdict of acquittal.

The *futwa* of the law officer appears to me to be opposed to facts, the evidence is direct and quite consistent as to the assault and recognition of all the prisoners at the time, and the fact of the witnesses being, for the most part, ryots of the prosecutor does not invalidate their testimony so long as nothing has been shown to render it open to suspicion, and it was the enmity that existed regarding these lands which led to the attack on the deceased and his untimely end. Disagreeing therefore with the *futwa* of the law officer, I would convict the whole of the prisoners as being accomplices in culpable homicide, in assaulting and wounding the deceased, from the effects of which he died, and recommend that a sentence of three years' imprisonment without irons and a fine of thirty rupees each, in lieu of labor, or to labor until the fine be paid or sentence expire, be passed against them.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) There are circumstances connected with the first intimation of this case at the thannah, which throw grave suspicion on the proceedings of the prosecution, and lead us to think this case wears all the appearance of having been got up against the prisoners.

The outrage complained of is said to have taken place on the 20th of Pouse, 3rd of January last, but the first intimation, forwarded to the magistrate, is dated the 8th of January, two days after the death of the deceased, whose body apparently accompanied the report.

In that report the darogah states that the deceased had come to the thannah on the 22nd, and complained of the assault committed upon him, exhibiting the wounds and injuries he had received, and accusing Chunderkunt Chuekurbutty and others of instigating the prisoners, Nos. 6, 8 and 10, to beat and wound him, but as his brother, the present prosecutor, had already gone to the sudder station to lay a complaint against them, and the deceased did not know what version of the story his brother might tell, he would not then give any deposition at the thannah, the darogah did not therefore take down his statement or report it, but his brother (the prisoner) had now brought his body and stated on oath that he had gone to the sudder station on the 20th of Poose, and on his return home on the 22nd, found his brother very ill and heard that a number of people whom he named had waylaid and beaten his brother severely, on the way to his house, and again in the night time, the same persons had attacked their house and taken his brother from his bed and violently assaulted him, from the effects of which he died on the 23rd of Poose.

Here there are two statements differing considerably; in one

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 WARISH and
 others.

the deceased is represented as presenting himself at the thannah on the 22nd with his complaint, but refusing to commit it to writing because his brother had gone to the sudder station to complain for him, and no allusion is made to the second assault, nor to the dangerous state of the deceased, who certainly died of congestion of the brain and spine on the following day; in the other, the brother himself states that he left home on the 20th for the sudder station, but only *heard* of the assault, &c. on his brother, on the 22nd *after* his return, who was then, he says, exceedingly ill, and died on the following day.

We find it quite impossible to reconcile these versions with each other; either the deceased was well enough to reach the thannah on the 22nd, and make an excuse for not giving any details of the case, or no intimation whatever of this outrage was ever made to the police, until after the deceased's death; in either case it seems to us that no effective measures were taken by the deceased or his family against the accused, to bring the charge home to them till many days had elapsed, and this is calculated to impress us with the belief that neither the deceased nor his family acted with that promptitude and singleness of purpose, natural to persons suffering as they are represented to have been from violent and unprovoked acts of their enemies. We find moreover that the names of the eye-witnesses were only made known to the police on the 11th of January, and until they were cited by the prosecutor no proof against the prisoners was procured. It is also worthy of remark that although at the first the names of several Hindoos were mentioned by the prosecutor to the darogah, as having led on and instigated the prisoners, these men were not implicated by the witnesses, in fact the charge against *them* seems to have been dropped before the case left the darogah's hands, and evidence is only adduced against the five Mahomedan prisoners committed for trial by the magistrate.

Taking into consideration then the interval which elapsed before the police were called upon to act, and the further delay which ensued before the prosecutor named those who gave evidence as *eye-witnesses* of all that occurred, and that these men are ryots and dependants of the prosecutor, we cannot place any reliance on them, and agree with the Moulvee that the evidence is untrustworthy and suspicious. We therefore order that the prisoners be immediately released.

PRESENT:

J. DUNBAR, *and*
H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT AND BIJYE MANJEE,

*versus*Bhaugulpore. CHOONA MANJEE (No. 3,) MUHESHA (No. 4,) REE-
CHOO MANJEE (No. 5,) SUNGRAM MANJEE (No. 6,)
AND CHUDRA MANJEE (No. 7.)1854. CRIME CHARGED.—Prisoner No. 3, wilful murder of Mus-
sumut Koelee deceased; prisoners Nos. 4 to 7, accessory after
June 2. the fact to the above murder.Case of CHOONA Committing Officer.—Mr. R. O. Heywood, magistrate of
MANJEE and Bhaugulpore.
others. Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 8th May, 1854.

Remarks by the sessions judge.—Prisoners all plead guilty.

Prisoner convicted of the wilful murder of a woman whom he suspected of witchcraft, sentenced capital-ly. Four other prisoners who assisted him in concealing the body sentenced, as accessories after the fact, to six months' imprisonment.

Choona prisoner No. 3, came to deceased's house and accused her of witchcraft and of having caused thereby the death of his daughter, and the sickness of his wife, whose disease she was peremptorily called on to cure. She denied all knowledge of medicine, but in company with her husband Bijye the prosecutor, and her son Karee, witness No. 19, went to Choona's house, where Choona on her refusing to undertake the cure of his wife struck her on the head with a heavy *lattee*; Karee tried to prevent him, but being unable, ran off with his father Bijye, to the farmer of the village, who sent Panchoo Chowkeedar witness No. 1, to enquire into the matter. Panchoo went to Choona's house, where he was told that deceased had gone away; Choona however was apprehended at the instance of the farmer and subsequently pointed out the corpse among the rocks in a hill about a coss from his house. Prisoners Nos. 4, 5, 6 and 7, had assisted him to carry the body to this place. Witnesses Nos. 1, 19 and 20, depose to the above facts as regards Choona, and Dr. Allan deposes to deceased having a wound on the head such as would cause death and might have been inflicted by an axe like that produced in court, a sharp heavy weapon, a blow with which on the head could hardly fail to kill.

The prisoners all confess distinctly to the crimes charged against them.

Choona No. 3, says that he killed Mussumut Koelee first striking her with the *lattee*, a long heavy wooden club produced in court, much stained with blood, and then with the *koolharee* or axe before-mentioned. He killed her because she was a witch.

Prisoners Nos. 4, 5, 6 and 7, confess to having carried away

the body at the instance of Choona, but deny all knowledge of the murder.

The jury bring in a verdict of guilty of wilful murder against Choona and of being accessary after the fact against Muhesha, Reechoo, Sungram and Chundra, in which I concur.

The prisoners and deceased were Sonthals, all more or less connected by family-ties; the crime was doubtless committed under the firm conviction of deceased's being a witch and having caused death and disease in Choona's family. There is no doubt of the facts of the murder, they are mostly proved in evidence before this court, as well as confessed to throughout by all the prisoners. I see no circumstance in mitigation of the crime proved against Choona, who is however a mild-looking man past the prime of life. The race of men the prisoners belong to, is ignorant and semibarbarous, the country they inhabit is wild and thinly peopled, and the crime doubtless originated in the gross superstitions and ignorance so prevalent among the jungle tribes. I have carefully examined the precedents in cases of this nature and find that life has been invariably spared on the plea of ignorance and want of civilization. Choona however has committed a deliberate murder, and should, in my opinion, undergo the extreme penalty of the law. The other prisoners convicted as accessaries after the fact, I would sentence to five years' imprisonment with labor in irons, there is no doubt, in my mind, of their being knowingly accessary to an attempted concealment of Choona's crime. The carrying away a body to hide it in the rocks forms no fact of their usual funeral customs, and could only be resorted to through some strong motive for concealment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) We convict the prisoner Choona of the wilful murder of Musst. Koelee.

The evidence afforded by his own confessions shows that he first struck the woman with a stick, telling her to cure his daughter, and when greatly enraged at the blow her son gave him, he went into his house to get an axe and struck the deceased on the head with it and killed her, that he kept the body in his own house, till the night was nearly passed, and then procured the assistance of the other prisoners to carry it away and conceal it in the jungle. This of itself shews that the prisoner was well aware of the enormity of his crime and was anxious to conceal it and avoid the consequences. The murder was deliberate and cruel, and we sentence the prisoner to suffer death.

There is no reason to suppose the accession of the other prisoners extended to any previous knowledge of the murder; we convict them of assisting the prisoner Choona, in endeavouring to conceal the body, and, under the circumstances of the case, sentence them to six months' imprisonment with labor.

1854.

June 2.

Case of
CHOONA
MANJEE and
others.

PRESENT :

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT,

versus

Nuddea.

MUSSUMUT ZEERAH BEWA.

1854.

June 3.

Case of
MUSST. ZEE-
RAH BEWA.Prisoner, an
infirm old wo-
man, convicted
of perjury, but
punishment re-
mitted in com-
pliance with
the recommen-
dation of the
sessions judge.

CRIME CHARGED.—Perjury in having on the 22nd February, 1854, corresponding with the 12th of Phalgun, 1260, B. S. declared on solemn affirmation, under Act 5, of 1840, before Kasheenath Bhuttacharge, acting darogah of thannah Kaghuz-pookooria at the house of Ruhmut Sirdar, in mouzah Beelee, that her daughter, the deceased, Musst. Porishkar Bewa, was on terms of intimacy with one Mullookchand Duffadar for the last four years, and becoming thereby pregnant, since the month of Kartick last, she miscarried early in the morning of one day, about ten days previous to the said 22nd February, that on her enquiry, she was told by the deceased, that the said Mullookchand Duffadar had administered certain drugs to her, in order to procure abortion, and that the deceased had subsequently come by her death, from the effects of the said abortion, such declaration being false, on a point material to the issue of the case, and with a malicious intention of bringing an innocent party to trouble.

Committing Officer.—Moulvee Abdool Luteef, deputy magistrate of Kalaroa, sub-division, Nuddea.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Nuddea, on the 23rd May, 1854.

Remarks by the officiating additional sessions judge.—The perjury committed by the prisoner is detailed in the charge, and the proof against her is her free and voluntary admission of guilt before the committing officer. This comprises the whole case.

The *futwa* of the law officer convicts the prisoner on her confession and declares her liable to *tazeer*.

I concur in the finding and sentence the prisoner, Mussumut Zeerah to three years' imprisonment without labor and irons, but in doing so urge the following considerations in remission of the punishment under the provisions of Clause 3, Section 9, Regulation XVII. of 1817. The prisoner is an infirm old woman and made the disingenuous statement in a moment of extreme sorrow, at the loss of a child taken under circumstances of peculiar distress. She had no personal interest in swearing falsely, and was instigated to the act by the party most interested in the deceit. The act itself was, moreover, unattended with inconvenience to the persons accused by her, and she voluntarily

came forward and confessed the guilty deed. In a word she gave herself up to justice almost as soon as she had offended the law, and made the only reparation in her power under the circumstances, which was to clear the innocent and condemn herself. I have only to add that the prisoner has been in confinement since the 26th of February.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) Taking into consideration the circumstances urged by the sessions judge in mitigation of punishment, we accede to his proposition, and, under the power vested in this Court by the law quoted by the sessions judge, we direct the discharge of the prisoner, who has already undergone upwards of three months' imprisonment.

1854.

June 3.

Case of
MUSST. ZEE-
RAH BEWA.

PRESENT:

A. DICK Esq. SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

Backergunge.

1854.

GOVERNMENT AND OTHERS,

versus

SURROOP CHUNG HOLDAR.

June 3.

Case of
SURROOP
CHUNG HOL-
DAR.

CRIME CHARGED.—1st count, wilful murder of Kishto Mohun Sircar and Radha Mohun Paul; 2nd count, severely wounding Mussumut Sookhi with intent to kill her.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 2nd May, 1854.

Remarks by the sessions judge.—From the tenor of the whole evidence, the following would seem to be the history of this tragical affair.

Kishto Mohun Sircar was a mohurrir under the tuhsildar in charge of the collections of Sunkerpore, the village where the murder took place.

Vide the evidence of witness No. 18, Mussumut Drero and No. 19, Banuram Holdar.

Radhā Mohun Paul, the other deceased, ceased to get some money from the witness No. 19, Banuram, who was his Hulshana. While Banuram went to get the money from the parties in whose hands it was, Kishto Mohun and Radha Mohun were told to sit down in the west shed. Shortly after Banuram's departure, when there was no one in the prisoner's house but his wife Sookhi and his decrepit old mother,

The prisoner was sentenced capitally, it being considered that although the alleged illicit intercourse of one of the deceased with his wife might have afforded justification of his act in respect to killing him, as regarded the other deceased, justification was wholly wanting.

1854.

June 3.

Case of
SURROOF
CHUNG HOL-
DAR.

Vide the evidence of witness
No. 3, Mussumut Soodhanea.

former two being seated in the above said west shed, while the latter was seated at the door of the principal house called the north house, the distance between the parties being only a few feet. While so engaged, the prisoner walked up from behind the men, and with a *dao* he held in his hand, he struck one blow at Kishto Mohun on the lower part of his

neck, which killed him on the spot; seeing this, Radha Mohun got up and ran off, but being soon overtaken, he was despatched with three blows of the same weapon, and the prisoner then returned to his wife, upon whose person he inflicted twelve terrible wounds with the same instrument, and leaving her, as he no doubt thought, for dead, he quietly went off to a neighbour's house, in which he was presently secured by the chowkeedars aided by some villagers.

- * No. 1, Goroopershad Mistree,
- No. 2, Sreemunt Mistree,
- No. 3, Musst. Soodhanea.

To the act there are three* eye-witnesses. Though these persons did not give their evidence before the darogah till the 7th and 8th day after the murder, their evidence so nearly tallies with what the prisoner himself afterwards admitted, that I think their statements may be implicitly relied upon. These each affirm that the two murdered men were sitting in the west house when the prisoner commenced the attack. The position of the wounds also indicate that they were struck from behind. No one saw the wounds inflicted on Mussumut Sookhi, but from her thannah and foudaree evidence and from the evidence of witness No. 17, Mussumut Kurona, it is evident that the attack upon her was made after the prisoner had killed the two men.

The evidence both direct and circumstantial is clear then, that the prisoner was the murderer. He himself admitted it before the magistrate and he does so before this court. His two confessions are not quite similar, but I accept as correct what the prisoner himself affirms, that he was deterred by shame from stating the real truth before the magistrate. Before the sessions his statement is, that while at a little distance from the house, he heard his wife's screams, that on going up to the house as he came behind the "*dhekee ghur*," a room of the main north house, he perceived through the broken *tuttee*, the two deceased men in the act of violating his wife. Kishto Mohun he says, must have seen him, for he immediately quitted the "*dhekee*

ghur" and sat down with an air of assumed composure in the west shed. The prisoner unable to restrain his anger, dealt Kishto one blow on his neck which killed him instantly. He says he then went inside the north house and seeing Radha Mohun there with his wife, he commenced an attack upon him in the house, and on his taking to flight, he followed him and finally slew him. He then returned to his house and inflicted, as he thought, the same fatal chastisement upon his wife.

I put credit in a great deal of this confession. From the very first his wife Sookhi has affirmed that the men attempted to force her, and that it was at the time of, or immediately after, being so engaged, that the prisoner assaulted them. If this is not the true secret of the prisoner's conduct, he acted without any motive. It is possible he may have only fancied that the deceased had a design on his wife's chastity, and seeing them in a suspicious position, may have been carried away by a jealous impulse, sudden and irresistible, to take dread vengeance on the supposed destroyers of his happiness and honor. However, my impression is, that the prisoner must have seen the parties in a more equivocal position than merely talking with each other separated a few paces apart. No one saw the two men in the west house *just* before the attack.

When the three eye-witnesses saw them, they may have just taken their place there, having been before engaged, as the prisoner and his wife affirm they were, in violating the person of the latter. The very circumstance of the men remaining at the house during the protracted absence of the party with whom their ostensible business lay, suggests the existence of some attractive influence to the spot. There is reason to think Kishto

Vide thannah depositions of witness No. 4, Musst. Monee, No. 17, Musst. Kurona, No. 18, Musst. Drero, and No. 19, Banuram Heldar.

Mohun, one of the deceased, had formerly formed an illicit affection for the prisoner's wife, and had on that account been expelled from the house where he had been a lodger. The account of the prisoner is also very natural and I cannot but give credit to it. It may I think be allowed to supply what is wanting in the evidence of the three eye-witnesses. They saw the two deceased seated on the foundation of the west house, the prisoner, unfortunately for them, had seen them before they were so seated, under circumstances which naturally aroused his passion, and led him irresistibly to that deed for which he is now arraigned.

What then is the amount of the prisoner's guilt? I take it as a fact established that he detected the two murdered men in the act of violating his wife, they find themselves detected, and rushing out with all haste take their seat outside as if nothing had happened. The prisoner who had the moment before been witness to their attempted dishonor of his wife slays them both

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with the weapon in his hand, and unable to control himself he proceeds to wipe out his wife's disgrace by the sacrifice of her also. Had he slain the two men while in the act, he would have been justified. But in following one of them a considerable distance and in slaying him with repeated blows, and then with deliberation returning to inflict twelve cruel wounds upon (by his own account) his innocent wife, the prisoner is guilty of actual wilful murder and a design to commit the same on his wife. Agreeing then with the law officer and convicting the prisoner of wilful murder, and in his *futwa* of "*deeut*" I would, in consideration of the above palliating circumstances, sentence the prisoner to imprisonment for life.

Remarks by the Nizamut Adawlut.—(Present: M. A. Dick Sir R. Barlow, Bart. and Mr. B. J. Colvin.)

Mr. A. Dick.—The statements and confessions of the prisoner, as likewise of the several depositions of his wife, are very different. Considering them however with the evidence of the three eye-witnesses to the infliction of the wounds on the two deceased persons, I place most confidence on the deposition given by the wretched wife at the thannah, the very day after the tragical affair. Her weak state, I think prevented her being full on some main points. This is supplied by the concluding confession of the prisoner, which is by far the most probable, and the only coherent statement he has made. These two statements thus taken together lead me to concur with the view of the case adopted by the sessions judge, corroborated as they are by the testimony of the eye-witnesses to the infliction of the wounds on Kishto Mohun and Radha Mohun, for the woman states that both went and sat down, where the eye-witnesses saw them, when attacked, after having been with her in the *dhenkie hut*, I cannot conceive that a man who had tolerated an intrigue with his wife for two years, without committing any violence on her or her seducer, would at the sight of their merely gay conversation in company too with a third person, have been so overcome with rage as to murder not only her and the seducer, but the third person who was a stranger and had given him no cause of anger. I would observe the prisoner had the *dao*, in his hand, and that he incontestably acted on the impulse of the moment, and on provocation (on the supposition of the truth of that part of the woman's deposition, and of prisoner's last confession, the only probable one in my opinion,) aggravating as could be. The sentence of death, the very utmost that can be pronounced should be reserved for premeditated murder, or murder without provocation, or any mitigating circumstance. I would sentence the prisoner as proposed by the sessions judge to imprisonment for life.

Mr. B. J. Colvin.—There is no doubt that the prisoner killed the two men and attempted the life of the woman. The only

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thing left for consideration is, whether there are any circumstances in the case palliative of his conduct. He himself has told three distinctly different stories; that at the thannah was in denial of his guilt, those before the magistrate and sessions judge in acknowledgment of it, although variously explaining the motives of his conduct. Before the magistrate he did not mention any recent instance of illicit intercourse between his wife and Kishto Mohun Sircar, but before the sessions judge he said that he had seen both the deceased men in the *dhenkee* house with his wife. She on her part has also varied in her statements, but she is consistent throughout in saying that Kishto Mohun Sircar had connexion with her, either with her will or against it, on the day in question. It was only before the magistrate and the sessions judge that she implicated Radha Mohun Paul in the violation of her. The witnesses however do not corroborate her statement, for according to them nothing more passed between the deceased men and the woman than conversation.

As the two deceased came openly to the prisoner's house in the day time and there sat down, while the brother of the latter went by their direction for the rents, it is not likely that in the expectation of his return, they would have engaged in criminal intercourse with the woman, when also neighbours were about; I am of opinion therefore that there is nothing to establish the fact of illicit intercourse, on the day in question, so as to justify the prisoner in the commission of his sanguinary acts. He had, it is true, good cause for jealousy against Kishto Mohun Sircar, and he was actuated no doubt by it, when he attacked him, but he had none against Radha Mohun Paul, whom in fact he did not know; and however I might be tempted to palliate his guilt, if he had confined his attack to Kishto Mohun, I can find no palliation of it as regards his wanton murder of Radha Mohun Paul, whom he seems to have pursued in the phrenzy of the moment, after having once given vent to his passion against Kishto Mohun Sircar. I would therefore sentence the prisoner to death.

Sir R. Barlow.—The prisoner before the police denied the charge, when first brought before the magistrate he also denied, but after the lapse of a few days volunteered a confession which he repeated with some variation, setting forth circumstances of extenuation before the sessions judge.

Several witnesses have sworn to seeing the prisoner in the very act of cutting down both Kishto Mohun Sircar, and Radha Mohun Paul; both died on the spot. After minutely examining the record I am unable to discover any thing which could have been the immediate cause of these murders.

The prisoner after denying the deed altogether, admitted it, pleading that he had been told by his wife Sookhi that a month

1854. before Kishto Mohun Sircar had had criminal intercourse with her and that this, and fear for his own life had induced him to commit the deed. He further endeavoured to palliate his offence in his confession before the sessions judge, by urging that he caught Kishto Sircar and Radha Mohun in the act, and cut them down then and there. Sookhi denied any previous connection with Kishto Sircar before the magistrate, whilst she fully admitted it before the police. The discrepancies in the prisoner's statements are glaring ; and it is clear that he and his wife availed themselves of the intervals and got up the story of the deceased having been taken *flagrante delicto*, in order to justify the murder or to mitigate the sentence.

Whatever may be the complexion of the case as regards Kishto Sircar, it assumes a character of the gravest nature with reference to the deceased Radha Mohun Paul. It is not even pretended that *he* had given the slightest cause of suspicion or offence. Seeing the prisoner in the act of killing his companion, Kishto Sircar, he endeavoured to make his escape, was pursued and killed by the prisoner on the spot. I see nothing in the trial, which would be a warrant for the Court to pass any sentence short of death upon the prisoner. I concur with Mr. Colvin.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges*.

MUSSUMUT LUGNEE, AND GOVERNMENT,

versus

SUMPUT PANDY.

Shahabad.

1854. CRIME CHARGED.—Committing rape on the person of Mussumut Lugnee.

June 3. Committing Officer.—Mr. H. C. Richardson, officiating magistrate of Shahabad.

Case of SUMPUT PANDY. Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 10th May, 1854.

Prisoner charged with rape acquitted, there having been an unaccountable delay in preferring the charge. *Remarks by the sessions judge.*—On the evening of the 9th February, the prosecutrix was collecting cow-dung in a field, when the prisoner called her and asked her to assist him in raising a load ; on her refusal, he came up to her, and seizing the girl in his arms carried her off to a field of sugar-cane and there ravished her.

The witnesses depose to having seen the prisoner in the act.

The testimony of one is impeachable, that of the other is open to question, as it differs somewhat from the evidence given

(or at least recorded) in the first instance at the thannah. The witness himself, however, persists that his statement at the thannah, was the same as that given before the court. However this may be, I have no doubt whatever of the occurrence, and consider the evidence of the whole sufficient for conviction. The evident shame and misery of the young girl, who, though married, has not yet lived with her husband, and her demeanour while giving her evidence strongly impressed the court with the veracity of her statement.

The defence of the prisoner is, that the father of the prosecutrix owes him ten rupees, and that having had a quarrel with him on the day of the occurrence, in consequence of the prosecutrix's brother having gathered some of his sugar-cane, the villagers all *assembled, and accused* him of the rape!

None of these circumstances, save the existence of the debt, were pleaded before the magistrate.

The absurdity of the defence is self-evident and appears to me *eminently to strengthen* the presumption against the prisoner.

The prisoner is a brahmin and resident of the village, and nothing but a true and sufficient ground would render it probable that such an accusation should be brought against him.

The *futwa* convicts the prisoner of the crime charged and declares him liable to *agoobut*.

The girl is young, timid, and modest. The culprit a sturdy and most ill-flavored man. The outrage is a brutal one. I recommend ten years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The prosecutrix states that the offence was committed on the 9th February, but from the darogah's first report it appears, that she did not complain till the 14th, and although the thannah is only one coss from her village, this delay is in no way accounted for, and at once throws suspicion on the case. The only evidence adduced in support of the charge is given by the eye-witnesses, whose contradictory and varying statements have induced the sessions judge to observe that "the testimony of one is impeachable* and that of the other is open to question." A charge of this nature, preferred only after an

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* Extract from a letter from the judge of Shahabad, No. 86, dated 14th June, 1854.

The presiding judges in the above trial observe: "The only evidence adduced in support of the charge is given by the eye-witnesses whose contradictory and varying statements have induced the sessions judge to observe that, 'the testimony of one is IMPEACHABLE and that of the other is open to question.'"

I have the honor to state that the word "IMPEACHABLE" ought to have been "UNIMPEACHABLE" and is so in the original, in the *fair draft, and letter book*. It appears as cited by the presiding judges, it is a clerical error, which must have escaped my observation.

1854. interval of five days and supported only by such questionable evidence to the fact, induces us to discredit the accusation and order the prisoner's release.

June 3.
Case of
SUMPUT
PANDY.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges*.

GOVERNMENT AND SUDDERUDDEE,

Dacca.

versus

SHEIKH KOORAN.

1854.

CRIME CHARGED.—Wilful murder of Merjan Chokra the nephew of Sudderuddee prosecutor.

June 5.

Case of
SHEIKH KOORAN.

Committing Officer.—Mr. C. Mackay, principal sudder ameen exercising full powers of a magistrate at Furreedpore.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 19th April, 1854.

Prisoner convicted of wilful murder, sentenced to transportation for life. Some doubt existed regarding the prisoner's sanity, but the Court held that he was fully capable of distinguishing right from wrong,

Remarks by the sessions judge.—The prosecutor stated that his nephew Merjan, a boy eight or nine years of age, was missing in August last. Having heard that the boy had been taken away by the prisoner and meeting this person at a spot near Deokhalee, he asked for the boy and sent the prisoner to the thannah, next day, his, the prosecutor's brother Guddai (witness No. 10,) found the boy in the jungle mortally wounded, but before he died, the boy said that the prisoner had stabbed him. The prosecutor and prisoner are brothers-in-law and, in Bysakh, had a dispute about land. In this court the prosecutor said the prisoner was not deranged, though he, the prosecutor, had made a partial admission to that effect before the principal sudder ameen.

As I should not wish it to be supposed that I had convicted the prisoner on the evidence of two witnesses, of which the testimony of one was impeachable and the other open to question, I shall be much obliged if the Court, will direct a footnote to be appended to the remarks, intimating this mistake of the copyist.

I should also be glad if the Court will once again refer to my letter, as it appears extremely strange that the word having been so clearly written "unimpeachable" in three separate places in this office, should have been incorrectly transcribed in the fourth.

I beg to send herewith for the inspection of the Court the original draft in my own hand, and the fair draft written by the head-writer, which I request may be returned to this office.

Extract from a letter from the register of the Nizamut Adawlut No. 591, dated 20th June, 1854.

The court, having had before them your letter No. 86, dated the 14th instant, direct me to state that they have referred again to your report on the trial of Sumpu Pandy, and find that the word is written impeachable. They will, however, under the explanation furnished by you, direct a footnote to be added when the case is published.

* No. 13 and 14, Sheikh Buchun and Meheroollah and Meheroollah (Nos. 13

† Sheikh Tonoo.

† Nos. 10 and 11, Sheikh Guddai and Summeeruddeen.

found the deceased, and Guddai bring the boy out.

The deposition of the prosecutor was corroborated by Sheikh Buchun and 14,*) who saw the prisoner taking the boy to the jungle, and Sheikh Tonoo (No. 15,†) who heard the prisoner ask the boy to go with him, and by Sheikh Guddai (No. 10,†) and Summeeruddeen (No. 11,) who saw

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Case of SHEIKH KOORAN.

when he committed the offence.

At the thannah and before the joint-magistrate the prisoner admitted the offence. At the thannah he said that he had killed the boy in consequence of Zoolfo (deceased's mother) having killed his, the prisoner's son, and given him, the prisoner, some deleterious potion. Before the joint-magistrate the prisoner gave no reason for the commission of the crime, and in this court pleaded *not guilty*, declaring he did not know what he had said he affected madness. He called witnesses, but these only proved prisoner had been melancholy from the loss of his child, not that he had been insane.

The sub-assistant surgeon, under whose charge the prisoner had been for about six weeks, considered him of sane mind.

The law officer who sat with me on the trial, found the prisoner guilty of wilful murder, he considered that *kissas* was barred but declared the prisoner liable to *aqoobut* at the discretion of the judge.

I consider the crime of wilful murder fully proved, but as the prosecutor made an admission before the principal sudder ameen,

that the prisoner was somewhat deranged, that the witnesses § Nos. 17 to 20, in this court, declare him to have been suffering from melancholy, and that the act of murder,

committed on the very slightest provocation, seems to argue some aberration of mind, I would give the prisoner the benefit of the doubt, and sentence him to imprisonment for life with labor and in irons.

I would remark that nothing on the evidence or the prisoner's conduct in court lead to the belief, that he was not aware at the time of committing the murder, that it was a most heinous offence.

Resolution of the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) No. 431 dated 5th May, 1854.

The Court, having perused the papers, connected with the case of Sheikh Kooran, observe that the sessions judge in summing up the evidence has remarked as follows.

I consider the crime of wilful murder fully proved, but as the prosecutor made an admission before the principal sudder ameen, that the prisoner was somewhat deranged, that the wit-

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SHEIKH KOO-
BAN.

No. 17, Sheikh Esuff,
" 18, Sheikh Zameer,
" 19, Muddun Sirdar,
" 20, Sheikh Allum.

nesses* Nos. 17 to 20, in this court, declare him to have been suffering from melancholy and that the act of murder committed on the very slightest provocation, seems to argue

some aberration of mind, I would give the prisoner the benefit of the doubt, and sentence him to imprisonment for life with labor and irons.

The Court observe that any doubt as to the sanity of the prisoner, *at the time* of committing the act charged against him, cannot be taken into consideration as a ground for mitigation of punishment, and any such doubt must be cleared up before the Court can proceed to pass any sentence on the prisoner, if the charge be proved. It is therefore of importance that the sessions judge should himself give a decided opinion on this point and the Court return the case, that he may either re-examine any of the witnesses or make further enquiries on the point, if he deems them necessary. Should any further evidence be taken, he will put the prisoner upon his defence again, and after taking a fresh *futwa*, record his opinion and pass the necessary orders on the case.

In reply to the above resolution the following report was submitted by the sessions judge.

Adverting to the Court's resolution No. 431, of 5th instant, I have the honor to observe, that I stated in my letter, that the prisoner was aware, at the time he was committing the murder, that it was a most heinous offence, I consider him to have been sane at the time he committed the crime, but laboring under a gross delusion, induced possibly by melancholy, such as must always give a suspicion of aberration of mind.

Under such circumstances, I considered that in recommending a sentence of imprisonment for life, I was acting in accordance with the precedents of the Court, I beg to refer particularly to the trial of Sookma Aurut, Nizamut report for 1852, Part II. pages 942 to 944.

The following extract from the remarks of the presiding sudder judge, will in my opinion apply to the case now before the Court, equally as to that of which it stands part. "I believe that she committed the murder under the influence of what may be called an insane delusion with the view of revenging the injury she conceived herself to have sustained at the hands of the prosecutrix. I do not think, however, that the delusion was of such a nature as to make her incapable of discerning right from wrong. She is therefore amenable to punishment, I convict her of murder, &c."

Should the record of the case be still in your office, I request you will retain it as my own notes are sufficient to enable me to form an opinion.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) In his first report of the 20th April last, the sessions judge, considering that there were grounds for believing that the prisoner was laboring under some aberration of mind when he committed the murder, wished to give him the benefit of the doubt, and, therefore, proposed a sentence of imprisonment for life. In their resolution of the 5th ultimo, the Court observed, that any doubt as to the sanity of the prisoner at the time of committing the act, could not be taken into consideration, as a ground for mitigation of punishment. The case was, therefore, returned to the sessions judge in order that he should give a decided opinion on this point.

The sessions judge, in his letter of the 16th ultimo, in reply, remarks that he had clearly stated that he considered the prisoner to have been sane, when he committed the murder, though laboring under a gross delusion, such as must always give a suspicion of aberration of mind. Under such circumstances, he had recommended a sentence of imprisonment for life, as in accordance with the precedents of this Court, particularly the case of Sookma Aurut, reported at pages 942 to 944, of the printed reports for 1852.

The Court remark that there is nothing whatever in the remarks, recorded by the judge, who disposed of the case of Sookma Aurut to warrant the inference that the sentence passed, was in any degree affected by a doubt as to the prisoner's sanity. On the contrary it is distinctly set forth, in those remarks, that the evidence for the prosecution left no room for doubt upon this point. The sentence of imprisonment for life had reference merely to the general circumstances of the case.

In the case before us, the guilt of the prisoner is satisfactorily established, and we see no reason to doubt that he was fully capable of distinguishing right from wrong, when he stabbed the boy, and knew that in doing so, he was committing an offence against the law. We convict him of murder, but under the circumstances of the case, and with reference particularly to the absence of any ruthless determination to destroy life, inferrible from the fact, that the boy did not die till the following day, we sentence the prisoner to be imprisoned for life in transportation beyond sea.

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Case of
SHEIKH KOO-
BAN.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT,

versus

DWARIK CHUNG (No. 20,) SADHOO CHURN DOSS
(No. 21,) RAMTUNOO CHUNG (No. 22,) OODHUB
CHUNG (No. 23,) KASHEENATH CHUNG (No. 24,) NADDEA.
JADOO CHUNG (No. 27,) AND GOUR CHUNG (No. 28.)

1854.

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Case of
DWARIK
CHUNG and
others.

CRIME CHARGED.—*Charge first*, 1st count, Nos. 20 and 21, severely wounding witnesses Nos. 1 and 2, with *dao* and *khonta* with intent to murder; 2nd count, Nos. 22 to 28, being accomplices in, and accessories to the above fact. *Charge second*, 1st count, Nos. 20 and 21, severely wounding the witnesses Nos. 1 and 2, with *dao* and *khonta*; 2nd count, Nos. 22 to 28, being accomplices in, and accessories to the above charge.

The prisoners were convicted as principals and accomplices in severely wounding two women. Conviction and sentence upheld, with the exception of the two years in lieu of stripes, a sentence of stripes not being authorised on such a conviction.

CRIME ESTABLISHED.—No. 20, severely wounding Bhoobun Bewa and of being an accomplice in the severe wounding of Mudhoo Bewa, No. 21, severely wounding Mudhoo Bewa and being accomplice in the severe wounding of Bhoobun Bewa and Nos. 22, 23, 24, 27 and 28, being accomplices, aiding and abetting in the severe wounding of Bhoobun Bewa and Madhoo Bewa.

Committing Officer.—Mr. H. B. Lawford, joint-magistrate of Nuddea.

Tried before Mr. A. Sconce, sessions judge of Nuddea, on the 2nd May, 1854.

Remarks by the sessions judge.—Both the women, whose wounds gave occasion to this trial, were treated and healed in the hospital of this station; the wounds of both were very severe; and for some days, according to the evidence of the civil assistant surgeon, the life of the woman Mudhoo was in danger.

The two women were attacked suddenly one evening by the prisoners, as they were proceeding from their own to an adjoining village, and the wounds they sustained were inflicted with a *dao* and with a *khonta*. The prisoners were neighbours of the women and were fully known to them, and by the women and witnesses have been fully identified. Sadhoo Churn Doss wounded Mudhoo Bewa; Dwarik wounded less severely Bhoobun Bewa, the other prisoners aided as accomplices.

The evidence offered in exculpation by the prisoners tended only to shew that the prisoners had been seen by their several witnesses, at one place or another, in the evening in question, but was altogether insufficient to counteract the evidence for the prosecution.

Sentence passed by the lower court.—No. 20, to five (5) years' imprisonment with labor and irons, No. 21, seven (7) years' imprisonment, and two (2) years' in lieu of stripes, being in aggregate to nine (9) years' with labor in irons, and Nos. 22, 23, 24, 27 and 28, three (3) years' imprisonment each and to pay a fine of fifty (50) rupees each within a month, in default of payment to labor until the fine be paid or the term of their sentence expires.

Remarks by the Nizamut Adawlut—(Present: Messrs. J. Dunbar, and H. T. Raikes.) In their defence the several prisoners allege enmity on the part of the two women, whom they state to be persons of very light character. We see no reason to distrust the evidence of these women, which has been consistent throughout in all essential particulars. According to the statement given at the thannah by the witness Nundram, a few hours after the occurrence, and the depositions of the two women taken next day, it appears certain, that the wounds with the *dao* and *khonta* were inflicted by the prisoners, Nos. 20 and 21, and that the others were all in a greater or less degree assisting in the mal-treatment.

The assault, so far as we can find, was wholly unprovoked, and of a most brutal character. We therefore uphold the conviction and confirm the sentence against all the prisoners, with the exception of the two years' imprisonment imposed upon prisoner No. 21, in lieu of stripes, the law no where authorising a sentence of stripes to be passed on conviction of charges of this nature.

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Case of
DWARIK
CHUNG and
others.

PRESENT :

SIR R. BARLOW, BART., J. DUNBAR AND H. T. RAIKES
Esqs., *Judges.*

GOVERNMENT AND ANOTHER,

versus

East Burdwan.

DINONATH SEMANDAR.

1854.

June 5.

Case of
DINONATH
SEMANDAR.

CRIME CHARGED.—Wilful murder of Ookil Dome Chowkeedar.
Committing Officer.—Mr. A. Abercrombie, magistrate of east

Burdwan.

Tried before Mr. J. H. Patton, officiating additional sessions
judge of east Burdwan, on the 9th May, 1854.

Remarks by the officiating additional sessions judge.—The

The prisoner,
a public watch-
man, was at-
tempting to
steal a sheep.
when he at-
tacked and kil-
led the decea-
ed, another
watchman, who
tried to arrest
him. Sentenc-
ed capitally.

prisoner is a field watchman and was detected by the deceased,
who was the village chowkeedar, in carrying off a sheep belong-
ing to a resident about 10 o'clock on a bright moonlight night.
On discovering the theft, the deceased gave the alarm and called
out for assistance. Several persons rushed towards him, and as
they came up they saw the deceased retreating and the prisoner
pressing him. A shout of "seize the sala" was uttered when the
prisoner ran off. He was pursued by the party headed by the
deceased and as the latter neared him, he turned round and dealt
him a blow with a sword across the neck which felled him to the
ground. The deceased expired almost immediately from the he-

* Witnesses Nos. 1, 2, 3 & 4. morrhage caused by the wound. The
persons indicated in the margin*

will prove these facts.

The evidence of the civil surgeon† shows that death was caused
by the blow inflicted by the prisoner, and
the record of the inquest held on the body

† Witness No. 10.

‡ Witnesses Nos. 8 & 9.

by the darogah will be found attested by
the witnesses enumerated in the margin.‡

The prisoner denies the charge and pleads *alibi*, citing wit-
nesses in proof of plea. The eight persons examined on his be-
half failed to support the defence.

The *futwa* of the law officer convicts the prisoner, on violent
presumption, of wilful murder and declares him liable to suffer
death by *kissas*.

I dissent from this verdict, although the prisoner Denonath
Semandar has committed an act of extreme violence and culpa-
bility by which a human life has been sacrificed; I cannot believe,
with reference to the circumstances under which that act was
done, that his object was to kill. That he intended to do some
bodily harm to the deceased in assailing him with a sword there
can be no doubt, but the occasion was too sudden and the provo-
cation too slight to suppose a premeditation to destroy life. But

while I notice this extenuating circumstance in connection with the deed, I cannot lose sight of the predicament in which the prisoner is alleged to have been in, when he committed it. The deceased states that he caught him in the act of stealing in direct and flagrant violation of his duty as a watchman; and it was in resistance of the law and justice that the prisoner perpetrated the homicide. Under all these circumstances, though convicting the prisoner of murder, I would propose that he be sentenced to transportation for life with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Mr. J. Dunbar and Mr. H. T. Raikes.)

Mr. J. Dunbar.—The sessions judge and the law officer both find the prisoner guilty of murder. The former would save him, however, from death, on the ground of absence of premeditation. I do not think that such a plea can well be raised in favor of a man who goes forth at night, armed with a sword, for the purpose of committing a crime, and who takes the life of another to insure his own escape, when detected in the commission of that crime, but I am opposed to the infliction of the extreme penalty of the law on other grounds. The evidence of the eye-witnesses, as given at the trial and in the mofussil, immediately after the event, differs considerably. At the trial the evidence goes to prove simply that when the chowkeedar chased the prisoner, the latter turned round and cut him down, whereas in the mofussil the same witnesses declared, that there was first a fight between the chowkeedar and the prisoner, the former armed with a *lattee*, the latter with a sword, and that after exchanging blows the prisoner went off, but that the chowkeedar having run after him and got ahead of him, the prisoner then cut him down. The omission or suppression of these facts materially affects the merits of the case, and I cannot deprive the prisoner of the benefit to be derived from the first version of the story and from a doubt that the witnesses have intentionally made their statements less favorable to the prisoner at the subsequent stages of the case. Keeping that in view, I think it is only reasonable to conclude that the prisoner intentionally refrained from making a deadly use of his sword, in the first encounter, and that he did so, only when he found there was every chance of having his head broken by the chowkeedar's *lattee*, unless he allowed himself to be taken. The chowkeedar was of course only doing his duty in trying to arrest a thief, but as he and others had clearly ascertained his identity, there was no clear necessity for extreme violence with a view to secure him. I convict the prisoner of the murder charged, but viewing the case as one, in which the prisoner made use of violence, only when driven to extremity, under the fear of himself suffering from the violence of his pursuer, I would sentence him, as proposed by the sessions judge, to transportation for life with labor in irons.

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Case of

DINONATH
SEMANDAR.

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Case of
DINONATH
SEMANDAR.

Mr. H. T. Raikes.—I cannot agree with my colleague in the view he has taken of this case. I do not gather from the account given by the witnesses at the thannah, that any encounter took place between the deceased and the prisoner, or that the latter had any reason to fear violence from the chowkeedar, as surmised by Mr. Dunbar. All that I understand them to mean is, that the prisoner menaced the chowkeedar with a drawn sword who raised his *lattee* in defence; in this position they saw them; the prisoner seeing the witnesses approaching ran off and the chowkeedar then got ahead of him, when the prisoner cut him down with one stroke which killed him.

The prisoner then brandished the bloody weapon at the witnesses, threatening to treat them in the same way if they attempted to seize him.

I cannot see that he *intentionally* refrained from using his sword at any time, he first kept the chowkeedar at bay while his associates made off with the sheep they had stolen, and when the deceased intercepted his flight, he did not hesitate to kill him.

Concurring in the conviction I would sentence him capitally.

Sir R. Barlow.—The prisoner was seen by the deceased, Oookhil chowkeedar, in the act of sheep-stealing. The latter raised a cry and himself, with others who came to his assistance, pursued the thief. Deceased ran ahead of the prisoner and stopped him whilst the others, eye-witnesses, were closing upon him, and they saw him from a distance of four or six haths, it being moonlight, cut down the deceased with a single blow of a sword. The deceased, on the spot, mentioned the prisoner as his assailant and died almost immediately after. It does not appear from the evidence that in his attempt to apprehend the prisoner, deceased made use of any weapon, or even that he struck at him.

The prisoner himself a watchman, was in the act of committing a crime, and murdered a police officer in the execution of his duty.

I see no ground for a mitigated sentence and concur with Mr. Raikes in the opinion that the prisoner should suffer capitally.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT,

versus

SHEIKH DENGGOO.

Mymensingh.

CRIME CHARGED.—1st count, culpable homicide of Jawabdee; 2nd count, wounding Fakeer Mahomed.

1854.

CRIME ESTABLISHED.—Culpable homicide.

June 5.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Case of
SHEIKH
DENGGOO.

Tried before Mr. W. Trotter, sessions judge of Mymensingh, on the 30th January, 1854.

Remarks by the sessions judge.—This case, which was first tried by my predecessor, on the 21st May, 1849, was thus reported by him. “The deceased had only come to the village ten or fifteen days before the assault which caused his death and knew few of his neighbours; a few days before, fifteen or sixteen persons, the prisoners, Sheikh Phefrah and others, going to fish, came to his house in his absence, and asked for fire and tobacco, which being refused, they threatened to punish him; accordingly some days afterwards, about midnight, the prisoners, as shewn by the evidence of witness, No. 1, and others, attacked the deceased’s house, by striking the walls with sticks, &c., and on the deceased’s going out to ascertain the cause, they knocked him down by a blow on the head and then broke both the bones of his left leg in such a manner, as, the civil surgeon states, to render amputation necessary, which he would not consent to, until too late, and died a few days after. When the attack was made, witness No. 1, an old man, who knew all the parties, went out, they knocked him down also by a blow on the head.” The judge sentenced the prisoners under trial to three years’ imprisonment and fifty rupees fine, in lieu of labor, for culpable homicide of Jawabdee and wounding Fakeer Mahomed (witness No. 1,) and concluded his remarks with these words, “This was a most unprovoked attack, and not committed when the slight offence took place, but some days after and at midnight. I have passed a sentence accordingly.” The prisoners then appealed to the Nizamut Adawlut, and the Court, (Present: A. Dick, Esq.) on the 10th August, 1849, rejected the appeal, observing that they would have affirmed a sentence of seven years’ imprisonment with hard labor.

Prisoner convicted of culpable homicide, sentenced to five years’ imprisonment. Appeal rejected.

The prisoner (Sheikh Denggoo) now under trial, had then absconded, and was captured only on the 15th December last

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Case of
SHEIKH
DANGOO.* Witness No. 2, Sheikh Ma-
homed Jan.Witness No. 3, Sheikh Shoo-
koor Mahomed.Witness No. 4, Sheikh Need-
meeah.

and he has been recognized by three eye-witnesses,* who distinctly named him as one of the party, who attacked the deceased and whom they named in their depositions on the first trial. He confessed at the thannah and before

the magistrate as being one of the party, who attacked the deceased, but before me he retracted his confessions, urging that they were extorted by the police, and he was frightened by a peon to repeat the same before the magistrate; but examined no witnesses to his defence. The *futwa* of the law officer convicts the prisoner of culpable homicide of Jawabdee, a finding in which I concurred, and I have sentenced him to what I consider an appropriate punishment, with reference to the part he took in the assault.

Sentence passed by the lower court.—Imprisonment with labor and irons for five years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) We see no reason to interfere with the conviction of the prisoner and the sentence passed by the sessions judge. We reject the appeal.

Dacca.

PRESENT :

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

1854.

June 5.

Case of
KUMULDYAL
SINGH.

GOVERNMENT AND RAMKISHEN DEO,

versus

KUMULDYAL SINGH.

CRIME CHARGED.—1st count, rape on the person of Musst. Mohamya the wife of Ramkishen Deo; 2nd count, attempting to rape Musst. Mohamya the wife of Ramkishen Deo.

Committing Officer.—Mr. C. W. Mackillop, magistrate of Dacca.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 17th May, 1854.

Remarks by the sessions judge.—The prosecutor stated that his wife was at home, and alone, when the prisoner entered the house, closed the door and violated her person. The wife Musst. Mohamya gave particulars of the assault; she said, she had called out before being gagged by the prisoner. Three witnesses* on the alarm being given looked through the *jhamp* and saw the prisoner commit a criminal as-

* No. 2, Dareekanath Doss,
,, 3, Indernarain alias
Collychurn Deo,
,, 4, Musst. Obhya.

sault. The prisoner being an influential person in the village, the witnesses did not interfere.

No. 5, Gungachurn Singh, Two witnesses* who saw the
 „ 6, Gopal Chung. prisoner escape, corroborated the
 above testimony.

The prisoner pleaded *not guilty* endeavoured to prove an *alibi*, which totally failed, and then presented a petition with some papers, to show he had a quarrel with the witnesses, which statements however, did not appear to be well founded.

It would have been perhaps better had the magistrate ordered a *sooruthal*, as some marks might have been found on the woman's person showing she had struggled with the prisoner.

The law officer convicted the prisoner of the rape.

I agree in the *futwa*. The proof of the crime seems almost too strong, but there has been no enmity shown, nor any reason why a false charge should have been made against the prisoner. The delay, in preferring the complaint, seems sufficiently accounted for by the prosecutor.

I convict the prisoner of the rape charged, and as the assault was attended with no aggravating circumstances, would sentence him to five years' imprisonment with labor and in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The evidence in this case is clear and conclusive against the prisoner. The plea alleged by him of enmity on the part of the prosecutor and witnesses, and his defence of *alibi* are not satisfactorily proved. The prosecutor too was at one time willing to withdraw the charge, which the magistrate very properly would not allow. This the prosecutor would not have done, had he been preferring a false charge from enmity. We sentence the prisoner, as proposed by the sessions judge.

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Case of
 KUMULDYAL
 SINGH.

PRESENT :

H. T. RAIKES, AND B. J. COLVIN, Esqs., *Judges.*

Shahabad.

1854.

MR. W. J. STEWART AND GOVERNMENT,

versus

June 7.

Case of
RUTTOO
AHEER and
others.

RUTTOO AHEER (No. 1,) GHORUN AHEER (No. 2,) OTUN AHEER (No. 3,) BUKTOUR AHEER (No. 4,) SEW ROY (No. 5,) ASMAN ROY (No. 6,) DHOWA-KUL ROY (No. 7,) DOMUN ROY (No. 8,) KOMUL ROY (No. 9,) HURNAM ROY (No. 10,) AND JOWABIN AHEER (No. 11,) APPELLANTS.

The prosecu-
tor, an indigo-
planter, was
very severely
beaten by the
relations of a
man whom he
had flogged for
allowing cattle
to trespass on
his indigo.
Conviction and
sentence up-
held, except as
regards two
boys.

CRIME CHARGED.—Severely beating and wounding with intent to murder.

CRIME ESTABLISHED.—Severely beating and wounding with intent to murder.

Committing Officer.—Mr. J. T. Worsley, deputy magistrate of Saseeram, Zillah Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 3rd January, 1854.

Remarks by the sessions judge.—The facts of this case are, that the prosecutor Mr. Stewart having, on the evening of the 17th November, found some buffaloes damage plants in his indigo fields, caught the gwalla who was tending them and gave him a flogging.

On the same night he was waylaid on his return from a fair at Tilothoo by the eleven prisoners, (and others not before the court), friends and relations of the flogged man, and cruelly beaten with the formidable *lattee* for which Arrah is so notorious.

* Porunwassay, Megraj, and Gomur- The assault and violence are nundy. established by three eye-witnesses as per margin; * the native doctor of Saseeram states that the wounds were extremely severe and such as to endanger life.

The defendants pleaded *not guilty*, but made no defence.

The *futwa* convicts the prisoners of the crime charged, and declares them liable to *acoobut*.

The attack is clearly proved. The intent to murder is not so clear, but the plaintiff's head bears present evidence of the severity of the wounds, and the assault of so many against one was cowardly and brutal, and taking into every account the provocation admitted to have been given by the plaintiff, the act of the defendants is highly culpable.

The prisoners Nos. 9 and 10, on account of their youth, are subjected to mitigated sentences.

Sentence passed by the lower court.—Nos. 1 to 8 and 11, each to be imprisoned with labor in irons for five years from the 3rd

January, 1854. Nos. 9 and 10, each to be imprisoned without irons for two years from the above date and to pay a fine of 25 Rs. on or before the 18th January, 1854, in default to labor until the fine be paid, or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) The mookhtear on the part of the prisoners has taken exception to the evidence of the eye-witnesses, as that of persons who are the servants of the prosecutor, but the circumstances of the case sufficiently account for these persons being alone in company with the prosecutor when the attack was made upon him. Beyond this, nothing has been urged against the order of the sessions judge.

The assault on the prosecutor is proved against the prisoners, and we see no reason to interfere with their conviction; but as the sessions judge remarks that the intent to murder is not so clear, he should not have entered such intent as part of the "Crime Established."

We uphold the sentence passed upon Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 11, of the prisoners, but direct the release of Nos. 9 and 10, who are stated in the calendar to be of the age of twelve and fifteen years respectively, as they must in all probability have been led away by the others to accompany them, and the punishment already undergone is in our opinion sufficient.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT AND ANOTHER,

versus

NOWRIT SINGH.

CRIME CHARGED.—1st count, attempt at theft of corn, valued at Rs. 1,000 or thereabouts, the property of the prosecutor; 2nd count, being accomplice in incendiarism in having destroyed by fire, corn to the value of Rs. 1,000, or thereabouts, the property of the prosecutor.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 25th May, 1854.

Remarks by the sessions judge.—The prosecutor, who belongs to a family with whom the prisoner is shown to have had strong cause for enmity and dislike, was lying out at night asleep in his stackyard, where large quantities of grain were stored. At about midnight he was awoken by the prisoner's approach, accompanied by two of his brothers, Soojee and Duljeet, and certain

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Case of
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Patna.

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SINGH.

The prisoner was convicted of arson in setting fire to the prosecutor's grain, sentenced with advertence to the value of

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NOWRIT
SINGH.the property
destroyed.

others along with them. They at first appeared to the prosecutor, as if intending to carry off the grain, but on an alarm of the cries being given, they set fire to it and then all made off in a westerly direction. By the blaze of light all the parties were recognised by the prosecutor as well as by the witnesses, Nos. 1 and 2, who were also guarding grain close in the vicinity. The prisoner was tried in the September sessions of this court of 1853, on a charge of murder, but acquitted along with his brothers for want of evidence. The defendant, Soojeet, (not apprehended) was also I find formerly imprisoned for five years for a theft of indigo; in this occasion, Mohur Raoot, the present prosecutor's uncle, appeared against Soojeet at the instance of his master, the owner of the Munair indigo concern.

Revenge for the part taken by Mohur Raoot in this trial is said to have been the cause of Soojeet and the others burning the prosecutor's crops on the present occasion.

The defence which has been put in, is unworthy of any belief. It amounts simply to the charge having been maliciously invented by one Beharee Sahoo, and the witnesses, who are brought by the prisoner, depose to an *alibi*. These witnesses were almost all of them summoned by the prisoner to prove his innocence in the murder case above noticed. They are mostly of the same caste and apparently ready for any occasion of difficulty in which the prisoner might be surprised. He is evidently a man of dangerous character. The *futwa* of the law officer acquits on the first count, but convicts on the second, and in the finding I concur.

With reference to the daring nature of the offence and its disastrous effects, I recommend that a sentence be passed upon the prisoner of fourteen years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) Having examined the proceedings, we find that the evidence for the prosecution is clear and conclusive against the accused. It is allowed both by him and his witnesses that there was a fire on the night in question, but it is said to have been the grain of Beharee Sahoo and others which was burned, and not that of the prosecutor, who, the prisoner alleges, had been instigated by Beharee to bring forward this case against him. This was not stated by the prisoner, in his defence before the darogah or magistrate, and therefore the evidence of his witnesses, who depose to that effect before the magistrate and sessions judge, is not to be credited.

We accordingly pass sentence as proposed by the sessions judge, as a large amount of property is shown to have been maliciously destroyed.

PRESENT :

A. DICK, AND J. DUNBAR, Esqs., *Judges.*

MUSST. TOOLLAH AND GOVERNMENT,

versus

CHINTA DASS.

Cuttack.

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Case of
CHINTA
DASS.

CRIME CHARGED.—1st count, wilful murder of Ram Jenna, son of prosecutor; 2nd count, assaulting and wounding the deceased, on the 27th August, 1853.

Committing Officer.—Mr. W. Brown, deputy magistrate, subdivision Bhuddruck.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 25th April, 1854.

Remarks by the sessions judge.—It appears from the record, that some time before day break, on Friday the 27th August last, Chinta Dass, the prisoner, accompanied by Bulla Dass, went to the house of Musst. Toollah, the joint prosecutrix with Government, and enquired for her son, Ram Jenna, stating that he had detected him stealing some *ghussee* or dried cow-dung, used for fuel, and was told by her that he had gone to the *bheel* to plant *dhan*; that Chinta Dass then returned to his own house, and in the morning went to the *bheel*, apprehended Ram Jenna, and beat him and took him to his house, where he further maltreated him; that in the evening of the same day, a rumour was spread that Ram Jenna had absconded from the custody of Pandub Mullick, the village chowkeedar, and on the following morning his body was found suspended from a large *peepul* tree in the immediate vicinity of his own and the prisoner's house. That on Sunday, the 28th August, the said chowkeedar proceeded to the Jhappore thannah, where he arrived on the 29th, and reported that Ram Jenna had committed suicide by hanging himself, but that his mother had not informed him as to the cause. And on receiving this information, the darogah first deputed the thannah mohurir to enquire into the case and afterwards proceeded to the spot himself, and on the 30th August, forwarded his *sooruthal*, or report of his examination of the body, &c. in which he stated there were marks of violence on different parts of his body and that from the place and manner in which it was suspended, it was not credible that the deceased had hanged himself. Notwithstanding which in his report of the 9th September, he stated that though Musst. Toollah charged Chinta Dass with having killed her son, it was proved, as alleged by the said Chinta Dass, that he had hanged himself. And though on the receipt of the last report, the record of the case was ordered to be laid before the deputy magistrate, the follow-

Prisoner convicted of culpable homicide on proof that he had seized and beaten the deceased, who was never seen alive at liberty afterwards; and was found next morning hanging from a tree in such a position, as to be manifest that he had not suspended himself.

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DASS.

ing day, the subsequent proceedings were conducted with such supineness and want of decision, that the deposition of Musst. Toollah, the mother of the deceased, was not taken before the 12th November, and the chowkeedar, from whose custody the deceased is said to have absconded, was not summoned till the 7th of December. In short, no effective measures were adopted to ascertain the real facts of the case, till after the 11th January, 1852, when the magistrate of Cuttack, observing that the deputy magistrate had confined a chowkeedar in jail in default of furnishing security for neglect of duty, called on him for an explanation, and it turned out that the individual in question was the chowkeedar concerned in the present case. And even then the prisoner, Chinta Dass, was not arrested till the 4th February, and was not committed till the 29th March, seven months after the occurrence.

Mussumut Toollah, the prosecutrix and mother of the deceased, deposes to the fact of the prisoner, Chinta Dass, having come to her house with Balla Dass, during the night of Thursday or before daylight on Friday the 26th August, and charged her son, who was then absent, with having stolen his *ghussee*, or cow-dung, prepared for fuel; and to his having in the morning apprehended and brought her son from the *bheel* and taken him to his house, at the door of which, she saw him lying prostrate with blood issuing from his nose; and to her having seen his body suspended from the *peepul* tree adjoining their houses on Saturday morning.

Pandub Mullick, witness No. 1, who was first arrested and confined in jail, on a charge of privity to the murder of Ram Jenna, and afterwards admitted as a witness under the provisions of Regulation X. of 1824, deposes that on Friday, Chinta Dass called him and told him the deceased had come to his house the previous night to steal his *ghussee*, and having detected him in the act, he absconded and effected his escape; but in the morning, he apprehended him in the *bheel*, and on his resisting, he beat him with his fists, and on his falling down, he, with the assistance of Fakeer Mullick and another person, had taken him to his, the prisoner's house, and on witness going to his house and telling him to produce Ram Jenna and the property he had attempted to steal, he, on various pretences put off doing so; and when it was getting late in the day, he, witness, called out to Ram Jenna and enquired what was the matter, when he replied in a faint voice that Chinta Dass had kicked him and struck him on the chest, and he was unable to get up. After which, he, witness, went away, and at night, as he was patrolling the village, he saw the prisoner standing under the *peepul* tree, near his house, throwing up the end of a rope or string which was tied round the neck of the deceased, to Fakeer Mullick and another person, who were perched up on the tree, and on his

asking Chinta Dass, what they were about, he said that Ram Jenna had died, and he was suspending his body to the tree to prevent the apprehension of the villagers, and he, witness, then went away.

Anunt Maintee, witness No. 3, deposes that on Saturday, the 28th August, at three *ghurrees* or about 8 A. M., he saw Chinta Dass taking Ram Jenna in the direction of his house, and on the latter's complaining to him that Chinta Dass had unjustly beat him, he pushed him forward, and that the prisoner had at the time, a stick about two feet long in his hand; that on going to the prisoner's house, about 10 A. M., he saw the marks of a person having been dragged from the cow-shed to the house, and heard the noise of beating inside, and on his calling out and asking the prisoner why he was beating people inside his house, he abused him and he went home, and that at about 4 P. M. he saw the prisoner sitting with Sunna Dass and others at the house of the said Sunna Dass, which adjoins that of the prisoner, and Ram Jenna sitting wrapped up in his *angocha* or cloth, on which he observed some drops of blood, in the *toonghee ghur*, or small hut, also belonging to Sunna Dass and on the following day, he saw Ram Jenna's body suspended from the *peepul* tree.

Sunna Dass, witness No. 4, states that on "Thursday" night between 1 and 2 o'clock, he heard the cry of thief, thief, at the house of the prisoner, Chinta Dass, and on going there saw Chinta Dass, Balla Dass and Punchoo Samul, and was informed by them that Ram Jenna had come to steal his *dhan* and had absconded; that they went to Ram Jenna's house and enquired of his mother where he was, and on being told by her that he had gone to plant *dhan*, they returned to their houses. That the next day at about 10 A. M. when he was sitting at his house with the above named persons and Bimbadhur Misser, the prisoner, Chinta Dass, came from his house with Ram Jenna and Pandub Mullick chowkeedar, and stood in front of his, defendant's house, and while there, Chinta Dass made over charge of Ram Jenna to Pandub Mullick, who asked Chinta Dass for the stolen property, and he replied that he would give it afterwards. That witness then went into his house, and at about 7 P. M. was told by Pandub Mullick that Ram Jenna had absconded, and on the following morning, he saw his body suspended from the *peepul* tree. But he distinctly denied that Ram Jenna was placed in his *toonghee ghur*. Koroonee Samal, witness No. 5, deposes that he went to the house of Chinta Dass on the night of the 26th August, on hearing a cry of "thief," "thief," and learned from him that he had detected Ram Jenna in the act of stealing his *dhan*, and that he accompanied Chinta Dass and others to the house of Ram Jenna, whence they returned to their respective houses; that the next day he went on his own business, and

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saw no one; and on the following one, the 28th, he heard that Ram Jenna's body was suspended on the *peepul* tree.

Kundroo Samul, No. 6, deposes that he heard Chinta Dass deliver Ram Jenna deceased, in charge of Pandub Mullick chowkeedar, about 10 A. M. on the 27th August, in front of Sunna Dass's house, and that on Pandub Mullick's asking Chinta Dass for the stolen property, he said he would give it afterwards; that at about 9 P. M. Pandub Mullick came to his house and told him that Ram Jenna had absconded, and that on the following morning, he heard from Ram Jenna's mother, that her son had hanged himself.

The above witnesses, Nos. 3, 4, 5 and 6, all deposed to the fact of marks of violence having been visible on the body of the deceased, as detailed in the *sooruthal*, dated 30th August, 1853, which is filed with the *nuthee*, and in which it is recorded, as the general impression, that the deceased could not have hanged himself in the position he was found.

Balla Dass, witness No. 7, and Pandub Samul, witness No. 8, deposed, that on hearing the cry of "thief" at the house of Chinta Dass, they went there, and saw Ram Jenna absconding.

Musst. Kokeloh, witness No. 9, who stated herself to be eighty or hundred years of age, and may be about seventy, deposed that she saw the prisoner and the deceased quarrelling at the door of the former, but she was old and stupid and had no distinct recollection of any thing.

Nund Jenna, witness No. 10, who is distantly connected with deceased, deposed to having seen the prisoner apprehend the deceased in the *bheel*, and beat him and take him in the direction of his house, and that he heard the following day from the deceased's mother that he had been killed and his body suspended on a tree.

Muddun Mullick, witness No. 11, deposed to having seen the prisoner apprehend the deceased and take him towards his house, accusing him of stealing his *dhan*, and to having seen Nund Jenna, witness No. 10, at a short distance off.

Before this court, the prisoner pleaded *not guilty* to both the charges, and stated that he adhered to the defence made by him before the deputy magistrate, which was to the effect, that on the night of *junum ashtumee*, viz. the 26th August, between the hours of 1 and 2 o'clock, he detected Ram Jenna in the act of stealing his *dhan*, when he threw down the basket containing it and absconded, that he then went to the deceased's house in search of him, and was told by his mother that he had gone to the *bheel* to plant *dhan*, and that in the morning he went to the *bheel*, apprehended him, and took him to his house, where he admitted the basket to be his. And that he made him over to the charge of Pandub Mullick, from whose charge he absconded.

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The *futwa* of the law officer acquits the prisoner, Chinta Dass, of the wilful murder of Ram Jenna, but declares the crime of culpable homicide to be established against him, by strong presumptive proof. However, in this verdict I cannot wholly concur. That there exists the strongest suspicion that the prisoner killed the deceased, and afterwards suspended his body to the *peepul* tree, there cannot be two opinions, and had the case been opportunely investigated, it is probable that the real facts might have been elicited. But as matters stand at present, I cannot place sufficient reliance on any part of the evidence, to ground a conviction thereon for murder. In fact, the evidence of Pandub Mullick chowkeedar, who has been brought forward as the principal witness on the part of the prosecution, is not only perfectly worthless, but I think the deputy magistrate exercised any thing but a sound discretion in admitting him to give evidence at all. For in the first place, he reported at the thannah that the deceased had committed suicide, but his mother had not informed him of the cause. Secondly, he stated in the mofussil during the investigation by the police, that the prisoner Chinta Dass delivered the deceased into his custody for stealing his *dhan*, and that he absconded and hanged himself. And thirdly, he now states that the prisoner did not make over the deceased to his charge, and that at night, when he was going his rounds, he saw the prisoner and two others suspending his body to the *peepul* tree. This last statement being in direct opposition to the evidence of Sunna Dass and Kundroo Samul, witnesses Nos. 4 and 6, who depose that the prisoner delivered over the deceased to the charge of the said chowkeedar in their presence, at about 10 A. M. the morning after the alleged theft. I, however, at the same time, think it pretty evident, that these last two witnesses also have given false evidence in collusion with the prisoner, and under all the circumstances of the case, I entertain very great doubt, whether any theft, or attempt at theft, was committed, otherwise the witnesses would not have been divided as they are, some in stating that they heard from the prisoner that he detected the deceased stealing *ghussee* or dried cow-dung, and others, that he detected him stealing *dhan*. The real facts of the case remain still a mystery, but I think it not impossible that some intrigue was at the bottom of it. I therefore acquit the prisoner on the first count, and convict him of assault on his own confession, and the evidence of the witnesses, Nos. 3, 9, 10 and 11, and the general circumstances of the case; and recommend that he be sentenced to twelve months' imprisonment and to pay a fine of Rs. 100 in fourteen days, or on default of payment to undergo the imprisonment in labor till the fine is paid, or the sentence expire.

The dilatory proceedings of the deputy magistrate connected

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with this case have already been brought to the notice of the superintendent of police by the magistrate of Cuttack.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and J. Dunbar.) There is satisfactory evidence, that the prisoner detected the deceased in stealing his grain in the night time, and called out and chased him. There is still stronger evidence, that he went next morning to the house of the deceased, and learnt from his mother, that he was out sowing rice in the *bheel*, or low lands; that he went and seized, and beat and drove him into his own house, and that beating was afterwards heard within prisoner's house: and there is also the evidence of one witness, that he saw the deceased in a distressed state, sitting alone in a hut, close by which, prisoner and some of his relatives were sitting together. This was about 4 o'clock P. M., and there is no evidence that deceased was seen alive afterwards. Two witnesses have testified, that ~~the~~ deceased was made over to the chowkeedar by the prisoner, about 10 A. M. of the day in question; but they do not say a word as to what the chowkeedar did with his prisoner; and though they state that the chowkeedar ~~that~~ very night came and informed them, that the deceased had escaped; they say not a word as to how, or whence, he had effected his escape! The evidence thus, on this point, is too defective to merit reliance. Lastly, the inquest shews that marks of beating were visible on the body, and that the deceased could not from the position he was found in, have hanged himself.

Therefore, as it is in proof, that the prisoner seized the deceased and beat him, and drove him into his own house, whence sounds of beating were heard; that he would not allow the mother or the wife of deceased to go to him; that he was never seen at liberty afterwards, or ever went home; and that next morning, he was found hanging with marks of violence on his body, and in such a position as to render it evident he had not suspended himself, the presumption is violent, that prisoner beat him so as to cause death, (though so far as is apparent, unintentionally, to that extent,) and then to avoid the consequences, hanged him on the tree to induce a belief, that deceased had committed suicide. We concur with the *mooftee*, and convict the prisoner of culpable homicide on violent presumption; and sentence him to five years' imprisonment with labor.

PRESENT :

A. DICK, AND J. DUNBAR, Esqs., *Judges.*

GOVERNMENT,

versus

HEERAMUN SINGH (No. 1, APPELLANT,) KUNCHUN
JHA (No. 2, APPELLANT,) HEERA SINGH (No. 8,) CHUMMUN (No. 9,) AND GUNGADEEN (No. 14, APPELLANT.)

Bhaugulpore.

CRIME CHARGED.—Affray attended with homicide of one Nundlal Singh, and wounding.

1854.

CRIME ESTABLISHED.—Affray with severe wounding.

June 7.

Committing Officer.—Mr. G. C. Chapman, deputy magistrate of Deoghur.

Case of

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 20th March, 1854.

HEERAMUN
SINGH and
others.

Remarks by the sessions judge.—Prisoners plead *not guilty*.

Appeal of
prisoners re-
jected, being
founded on
erroneous
grounds.

Witnesses Nos. 1 and 2, are police burkundazes, they prove the affray and identify the prisoners Nos. 1, 2, 8, 9 and 14; prisoners Nos. 1 and 8, were both wounded by swords or some sharp cutting instruments, vide evidence of Doctor Allan, civil surgeon, taken before this court. Nundlal deceased was also engaged in the affray, was badly wounded, and died probably owing to weakness induced by the wounds; this is not however, sufficiently clear to maintain the charge of culpable homicide which is consequently abandoned. Nine men are acquitted for want of evidence to identify them. Vide acquittals No. 3.

The prisoners plead variously, some that their party was not the attacking one, others that though on the spot, they took no part in the affray, they bring no witnesses however to support their allegations; none of those for the defence named in the calendar have attended at this court except Ruhmoo No. 1, who is also the principal witness for the prosecution and whose evidence in defence has been refused by the party naming him.

The law officer brings in a *futwa* of guilty of affray with severe wounding, in which I concur, and as there is no direct evidence of premeditation, sentence the prisoners to four years' imprisonment without irons and to pay a fine of 50 Rs. each, within one month, or in default of payment to labor until the fine be paid or term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and J. Dunbar.) Three of the prisoners appeal on the ground, that others have been released upon the very evidence upon which they have been convicted. On referring to the record, we find that the witnesses readily identified the prisoners

1854. and named them, while they only swore to the fact of the others having been present in the affray, without being able to give their names in corroboration. The names however of the petitioners, they stated in their first depositions before the police, speaking of them in a manner which left no doubt of their having taken an active part in the affray. We reject the appeal and confirm the sentence passed by the sessions judge.

June 7. Case of HEERAMUN SINGH and others.

PRESENT :

H. T. RAIKES, AND B. J. COLVIN, Esqs. *Judges.*

GOVERNMENT,

versus

Mymensingh. SHEIKH ZEENAH (No. 1,) SHEIKH DHONA, (No. 2, APPELLANT) AND SHEIKH TOYUB, (No. 3, APPELLANT.)

1854. CRIME CHARGED.—No. 1, perjury, in having on the 23rd December, 1853, intentionally and deliberately given his evidence under a solemn declaration taken instead of an oath before the law officer of this district, in the cases of Eakoob and Nazir under the name of Jokee, resident of Mohesha Kandah. The name and the place of residence so stated being false, and having been intentionally and deliberately made on a point material to the issue of the case. No. 2, perjury in having on the 23rd December, 1853, intentionally and deliberately given his evidence under a solemn declaration taken instead of an oath before the law officer of this district in the cases of Eakoob and Nazir, under the name of Sooboorallee resident of Mohesha Kandah. The name and the place of residence so stated being false and having been intentionally and deliberately made in a point material to the issue of the case. No. 3, perjury in having on the 23rd December, 1853, intentionally and deliberately given his evidence under a solemn declaration taken instead of an oath before the law officer of this district in the cases of Eakoob and Nazir under the name of Feedoo, resident of Shoabaz. The name and the place of residence so stated being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh on the 27th March, 1854.

Remarks by the sessions judge.—It appears in evidence that on a complaint being lodged against one Eakoob in the foudaree

court, the latter preferred a counter-charge against the prosecutor, and in both cases Sheikh Feedoo of Shoabaz and Sheikh Subur Allee and Sheikh Zukee of Mohesha Kandah were named as his witnesses, they were duly summoned but did not attend, shortly after the prisoners came forward and gave evidence in favour of Eakoob, No. 1, calling himself Sheikh Zukee of Mohesha Kandah, No. 2, styling himself Subur Allee of the same place, and No. 3, Fedoo of Shoabaz. This deception was immediately discovered by Nazir Khan the prosecutor against Eakoob, who brought it to the notice of the law officer to whom the cases were made over for decision in his criminal capacity, and the result of the enquiry, the law officer caused to be made through the police was, that they were not really those persons, by whose names they appeared and gave evidence. In their defence before the magistrate the prisoners denied the charge, No. 1, urging that he was called both Zeenah and Zukee, but the latter being more in use he gave evidence by that name and that he was a resident of Mohesha Kandah. No. 2, that his real name was Subur Allee, though sometimes called Dhonah, that he mentioned both the names at the time that his evidence was being taken down, but could not say if the recording mohurrir had written both names, and that as he was at the time serving at Mohesha Kandah he named that place as his residence. No. 3, that his real name was Fedoo, though at times called Toyub, he therefore gave out his real name when his evidence was being recorded, that his former residence was at Shorisha, but that as he latterly resided at Shoabaz he mentioned it as his place of residence. In the sessions court No. 1, admitted the crime charged against him, but Nos. 2 and 3, denied the charge of wilful misrepresentation of their names, and said that they were instigated to do so by one Sadutt Allee

* No. 16, Sheikh Aidur, Khan, nephew of Eakoob, but
 „ 17, Sheikh Annoo. the witnesses* examined on their behalf did not support their statements; even if the fact of being suborned had been proved, it would not in any way be admitted as an excuse for a wilful misrepresentation made under a solemn declaration.

The *futwa* of the law officer found the prisoners guilty of perjury in which I concurred.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for the period of three (3) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) We find, as stated by the sessions judge, that the prisoner Zeenah made a clear confession of guilt at the sessions, and the other two also admit their having given on oath false names through the instigation of another person. We see no reason to interfere with the conviction and sentence passed on the prisoners, and reject their appeal.

1854.

June 7.

Case of
 SHEIKH ZEE-
 NAH & others.

PRESENT :

A. DICK, AND B. J. COLMAN, Esqs., *Judges.*

GOVERNMENT,

*versus*BHUJOHORI MOOCHEE (No. 3), CHUNDI CHURN
MOOCHEE (No. 4.)

Nuddea.

1854.

June 12.

Case of
BHUJOHORI
MOOCHEE and
another.The contra-
dictions in the
prisoners' de-
positions were
held not to
amount to wil-
ful perjury.

CRIME CHARGED.—Perjury, in having on the 10th of March, 1854, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the deputy magistrate of Santipore, that they did not know them (the defendants Baboos Ghunnoo and Auroon) and in having on the 20th April, 1854, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the magistrate of Nuddea that they did recognise the abovementioned defendants (they being in court) such statements being contradictory of each other on a point material to the issue of the case.

Committing Officer.—Mr. J. E. S. Lillie, magistrate of Nuddea. Tried before Mr. J. H. Patton, officiating additional sessions judge of Nuddea, on the 19th May, 1854.

Remarks by the officiating additional sessions judge.—The perjury charged against the prisoners is detailed in the charge, and the evidence offered in proof are the two recorded statements made by the prisoners, severally, before the deputy magistrate of Santipore and the magistrate of Nuddea, on distinct and separate dates.

These records speak for themselves and are verified and attested by the parties who wrote them.

The prisoners deny charge, alleging that their testimony was consistent before both courts and ascribing the discordance apparent in the recorded statements, to collusion between the native officers on the deputy magistrate's establishment and one of the litigant parties in the case under investigation.

The *futwa* of the law officer acquits both the prisoners, the prisoner Bhujohori Moochee No. 3, on the ground principally, that his statement before the deputy magistrate of Santipore being indefinite as to his knowledge of and acquaintance with the two Baboos concerned, his subsequent indication of those persons as the defendants, when brought up before the magistrate, does not constitute perjury, and the prisoner Chundi Churn Moochee No. 4, on the ground of the insufficiency of the evidence brought against him, the documents which support the charge being attested each by one individual only.

I concur in the finding as regards the prisoner Bhujohori Moochee, and order his release, but I dissent in respect to the prisoner Chundi Churn Moochee. The two statements made by him, relative to his knowledge of the Baboos in question, are distinctly and essentially at variance with each other and it is abundantly proved that these statements were given under solemn declaration, recorded in due form before two courts of justice and bear on a point material to the issue of a case then pending. I therefore convict him of perjury and propose that he be sentenced to four years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) On perusing the two depositions of the prisoner and comparing them, the Court are of opinion, it is not at all conclusive that the prisoner, Chundi Churn, committed perjury. When he deposed before the deputy magistrate of Santipore he said, on the 9th March, that on hearing the sound of a *dunka*, (kind of drum) he went out and saw about 200 rioters and with them the two Baboos, Auroon and Ghunoo on horses; and in continuation on the 10th, on being asked the color of their horses, answered, that in the midst of the crowd he did not observe the colors of their horses. Again on a question from the agent (mokhtear) of Bamundas Baboo, how long he had known Ghunoo Baboo and Auroon Baboo, he replied, I do not know them. I have heard their names. Before the magistrate of Nuddea, on the 20th April, after recognizing other prisoners present, he pointed to Auroon Baboo and Ghunoo, prisoners, and said, These are defendants, (asamecs,) and I know them. And on being reminded that he had stated first to the deputy magistrate that he had seen Auroon and Ghunoo Baboos on horses, and then that he did not know them, but had heard their names; and asked how he now could say he knew them, he simply replied, I know them. That the prisoner declared in this last deposition, that he had known the two Baboos so long as he could remember, or for years, he would clearly have contradicted his former testimony. It is however possible, nay very probable, that these two Baboos had been seen by him several times during the interval at the trial, and pointed out to him; he therefore knew them at his last examination, and all he meant to say, by I know them, was that he knew them to be the persons he saw on the horses. We therefore acquit him and order his release.

1854.

June 12.

Case of
BHUJOHORI
MOOCHEE and
another.

PRESENT:

A. DICK, AND B. J. COLWIN, Esqs., *Judges.*

GOVERNMENT,

versus

Tirhoot. BEEDESSEE (No. 5,) SHEOSHAHAY (No. 6.)

1854. CRIME CHARGED.—Perjury.

CRIME ESTABLISHED.—Perjury.

June 12. Committing Officer.—Mr. F. A. Glover, joint-magistrate of Chumparun.

Case of
BEEDESSEE
and another.

Tried before The Hon'ble R. Forbes, sessions judge of Tirhoot, on the 1st May, 1854.

The conviction of the prisoners of perjury was affirmed.

Remarks by the sessions judge.—The prisoners, uncle and nephew, were witnesses for a defendant in a case of assault before the joint-magistrate of Chumparun, and the prisoner Beedessee Roy (No. 5,) on his deposition being taken down on the 4th of April last, on solemn affirmation instead of an oath, after his own statement had been recorded and on cross-examination was asked by the joint-magistrate whether he (prisoner) was the brother of one Bissessur Roy Gomashta, also a defendant in the same case, in answer to which question he deposed that he was not. On the same date the prisoner Sheoshahay, a witness for the same defendant as his uncle, the prisoner No. 5, on being asked by the joint-magistrate on cross-examination and after his own evidence had been taken, also on solemn affirmation, what relation the gomashta Bissessur Roy was both to the other prisoner and to him, positively denied his being related to either of them. On the same day, however, the witnesses

No. 7, Achumbit Roy.

No. 8, Ragoonath Dosad.

Nos. 7 and 8, also witnesses for the same defendant as the prisoners, deposed before the joint-magistrate (as they have also done in this court) that they knew the gomashta Bissessur Roy to be the own brother of the prisoner Beedessee Roy, and again on the 13th April, (after enquiry by the darogah, instituted by the joint-magistrate's order, had established the fact of near relationship between both the prisoners and the gomashta Bissessur Roy) the witnesses Nos. 4, 5 and 6 deposed before the joint-magistrate (as they have now done in this court,) that the gomashta Bissessur Roy was the own brother of the prisoner Beedessee Roy (No. 5,) and the uncle of the prisoner Sheoshahay. On that date also the prisoners being again interrogated by the joint-magistrate, the prisoner Beedessee Roy admitted that Bissessur Roy gomashta was his own brother and the prisoner Sheoshahay that that person was his

uncle, the admission of both being attested by the witnesses Nos. 1 and 2. 1854.

In this court the prisoners pleaded guilty, defending themselves by saying that they did not at first tell the truth from fear and confusion, but they had no witnesses to call to such a plea, however, with reference to there being no reason why two witnesses in the same case who had already given their evidence should only on cross-examination get afraid and confused on the single point of relationship to a particular person, a point on which to a witness disposed to speak the truth there need be no ground of fear or confusion, cannot be admitted; adverting also to the frequent occurrence of cases of this kind in which witnesses knowingly and deliberately come into court prepared and resolved (as the prisoners must have done) to perjure themselves, with the object of procuring the readier credence to their testimony, I concur in the propriety of the finding of the law officer who in his *futwa*, convicting the prisoners of perjury, declares them liable to discretionary punishment by *tazeer*, and not deeming the case, with reference to the above remarks, to be one calling for mitigation of punishment, I have sentenced the prisoners as shown in the proper column.

Sentence passed by the lower court.—Nos. 5 and 6, each to be imprisoned with labor in irons for the period of three years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The petitioners in appeal have urged no grounds for interference with the sentence, which we therefore affirm, the perjury being clearly admitted by them.

June 12.
Case of
BENDESSER
and another.

PRESENT :

A. DICK, AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT,

versus

Bhaugulpore. DHURMA BASOO (No. 1.) AND MUSSUMUT LUTCH-MUNEEA (No. 2.)

1854.

CRIME CHARGED.—Wilful murder of Kullea Surwa, deceased. Committing Officer.—Mr. R. O. Heywood, magistrate of

June 12.

Bhaugulpore.

Case of

DHURMA

Basoo and another.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 9th May, 1854.

Remarks by the sessions judge.—Prisoners plead not guilty.

The facts of this case, as clearly proved by the evidence of

Conviction of aggravated homicide against one prisoner and of being an accomplice in it against another, who handed the lethal weapon to the first prisoner, in citing him at the same time to use it.

eye-witnesses, are as follows. About 9 o'clock, on the night of the 12th of April last, deceased and three others, Soorja Manga, witness No. 1, Dohra Soorja, No. 2, and Kullea Duva,* No. 3, all sepoy of the Bhaugulpore Hill Rangers, were seated out of doors eating their dinner, when Dhurma Bassoo, the male prisoner, came up and commenced striking and kicking Dohra Soorja. Soorja Manga prevented him and he was retiring towards his house when Lutchmuneea, the female prisoner, Dhurma's mistress, fetched from the house a large wooden iron shod pestle four feet long, and as thick as a man's arm, called a *sumat*, and placing it in Dhurma's hands told him to *mar* them all. (Dohra Soorja, witness No. 2, says, she told him to *mar* deceased, naming him, but this is not corroborated by any other witness.) He was then a few paces from them, some say three, some six, and concealing the weapon behind his back, he came up and suddenly struck deceased a single blow on the head, which fractured the skull and caused death. Medical treatment was at once resorted to and the sufferer trephined, but he died the next day without once recovering consciousness. Vide evidence* of Dr. Allan, witness No. 8.

* The deposition of James Allan, Esq., civil assistant surgeon of Bhaugulpore, taken on oath before me this 9th day of May, 1854.

Q. Do you remember the case of Kullea Surwa of the Bhaugulpore Hill Rangers, who came under treatment in April last?

A. I do.

Q. Describe the nature and extent of the injuries he had received?

A. He had received a lacerated wound on the scalp on the back of his head which extended to the skull, which was fractured. I trephined the patient in the early stage of the case, but he derived no benefit from the operation. I afterwards carefully dissected the wounded part and found

Dhurma Bassoo, prisoner No. 1, denies the crime, says deceased was his near relation, how could he have struck him? Imputes enmity to Soorja Manga, says the *sumat* or pestle produced in court is not his, did not belong to his house, that he has served as a soldier for eleven years without fault.

Mussumut Lutchmuneea, prisoner No. 2, denies having given the pestle to Dhurma, says she was asleep in her house, when the havildar came and took away Dhurma on the accusation of having killed somebody. Imputes enmity to the principal witnesses for the prosecution.

The witnesses produced by prisoners deposed to their having retired to their house after eating, some say at seven and some at 8 o'clock on the evening in question. No. 15, only says that Lutchmuneea was in her own house at 9 o'clock on the same evening.

There were two juries empanelled in this case, one of Hillmen for the trial of Dhurma Bassoo, the other of Hindustanees for that of Mussumut Lutchmuneea, who is of the caste of Rajpoots.

The hill jury find a verdict of guilty against Dhurma Bassoo. Their verdict is simply that Kullea, deceased, was killed by Dhurma Bassoo, but without the intention on prisoner's part of destroying life. The jury of Hindustanees find a verdict against Mussumut Lutchmuneea of guilty of being accessory before the fact to the crime of aggravated culpable homicide. In these verdicts I concur.

There is no doubt of the facts, neither is there any proof of premeditation or previous malice, the weapon used was a most murderous one, the attack quite unprovoked, the prisoners were partially intoxicated, but this cannot be pleaded in extenuation. I find Dhurma Bassoo guilty of aggravated culpable homicide and would, with reference to precedents in like cases, recommend his being imprisoned for fourteen years with labor in irons and in banishment to some other zillah. The prisoner, Lutchmuneea, is, in my opinion, equally guilty, she is clearly proved to have instigated the crime and provided the weapon. I convict her of being accessory before the fact to aggravated culpable homi-

1854.

June 12.

Case of
DHURMA
BASOO and
another.

extensive fracture of the skull with extravasated blood effused between the membranes and the brain caused, by rupture of the vessels.

Q. Should you suppose the injury you describe to result from a blow of a club like that now shown you?

A. Yes, I have no doubt that a blow from such a weapon could produce the injury I have described.

Q. Can you positively swear deceased's death was caused by the wound on his head you have described?

A. Yes, I can.

Q. What was deceased's probable age, and was he apparently otherwise strong and healthy?

A. He was quite a young man in strong robust health. Deceased died about sixteen or eighteen hours after the injury.

1854.

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Case of
DHURMA
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another.

cide and would sentence her also to fourteen years' imprisonment in this jail with labor suited to her sex.

Since writing the above I have received from the officer commanding the Hill Rangers the accompanying letter* giving so high a character to the prisoner Dhurma Bassoo, that had it appeared as evidence on the trial I should have been induced to abate the amount of punishment recommended. I have only to lay the letter in original before the court, requesting their particular attention to that part, describing the prisoner as habitually a sober character among a class much given to drunkenness. There is no doubt that the prisoner's crime was committed in a state of partial inebriation and that it was instigated by the woman, Lutchmuneea, after the man had satisfied his ill-will by a slight punishment of the offender. The high character borne by the prisoner, Dhurma Bassoo, for more than eleven years should I think, be favorably considered by the Court.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The Court convict the prisoner Dhurma Bassoo of aggravated culpable homicide, aggravated as apparently without any cause, and not palliated by being perpetrated in a state of partial intoxication. They cannot deem the prisoner an object of mercy, though his previous good character has been certified by his commanding officer, for he not only denied his guilt, but attempted to cast it on another. They sentence him to fourteen years' imprisonment with labor in irons. It is to be regretted that the kote havildar was not examined, to ascertain when the prisoner was taken into custody and what witness No. 1, told him when he made over the pestle and reported the occurrence. Evidence should likewise have been taken regarding the pestle, whether it belonged to prisoner or to whom, and the witnesses to the defence, ought to have been asked whether the deceased had fed with prisoner that evening, as first declared by prisoner, an allegation so totally at variance with the evidence for the prosecution.

We convict the female prisoner, Lutchmuneea, of being an accomplice in the homicide, inasmuch as she handed the pestle to the male prisoner and incited him to use it, and sentence her as recommended.

* From the officer commanding the Hill Rangers to the sessions judge of Bhaugulpore No. 93, dated the 11th May, 1854.

I have the honor to furnish you with the following particulars, relative to Dhurma Bassoo, sepoy of my regiment, who has been tried by you on a charge of wilful murder.

During the whole of his service in the Hill Rangers, extending over a period of upwards of eleven years, Dhurma Bassoo has borne an unblemished character, and has been conspicuous amongst his comrades for his soldier-like performance of his duties, his quiet orderly conduct and more particularly for his never having been addicted to drunkenness, a vice so prevalent amongst the men of the Hill Rangers.

PRESENT :

A. DICK, AND J. DUNBAR, Esqs., *Judges.*

GOVERNMENT AND BHOOBUN MOHUN DUTT,

versus

PETUMBER BAG (No. 1,) SUMBHU CHOWKEEDAR (No. 2.) East Burdwan.

CRIME CHARGED.—1st count, dacoity attended with wounding, prisoner, No. 2, being a police chowkeedar at the time of the occurrence; 2nd count, prisoner, No. 1, knowingly having in his possession plundered property acquired by the above dacoity. 1854.

CRIME ESTABLISHED.—Dacoity with wounding.

Committing Officer.—Mr. A. Abercrombie, officiating magistrate of East Burdwan. June 13.
Case of
PETUMBER
BAG and another.

Tried before Mr. H. F. James, sessions judge of East Burdwan, on the 6th April, 1854.

Remarks by the sessions judge.—The prosecutor's house was attacked by dacoits on the 14th Pous last, (28th December, 1853,) and property to the amount of some 448 Rs. plundered and carried off. The prosecutor and his neighbours state that they distinctly recognized some of the attacking party. Witness No. 1, was wounded by the dacoits. The two prisoners were apprehended on their return home to their houses in the morning, laden with the spoils of the dacoits by some police burkundazes, who had received intimation that prisoner, No. 2, Sumbhu Chowkeedar, was absent from his house on the night of the occurrence, having been called away from home by prisoner, No. 1. The witnesses, Nos. 8, 9, 10 and 11, therefore stationed themselves near the houses of the prisoners and watched for their return and arrested them, when on the person of prisoner, No. 1, some part of the plundered property was found, which the prosecutor and his witnesses prove to belong to the prosecutor; witnesses, Nos. 3 and 4, also swear to having recognized prisoner, No. 1, among the dacoits. Before the police both prisoners confessed to having gone out with the preconcerted intention of committing a dacoity, but that in consequence of some disputes, which arose between them, they returned without effecting their object, and that when they were caught, they were on their way to their houses. Prisoner claims the property, No. 1, found on his person, a silver chain, as his own and denies that the property, Nos. 2, 3, 4, were found near the spot where he was apprehended. The guilt of both these prisoners, is, in my opinion, clearly established against them by the evidence of the witnesses and by the statements made by each at the thanah, which were duly attested and sworn to. Neither of the Prisoners acquitted, the reports of the police regarding their apprehension, and the evidence for the prosecution not being at all satisfactory.

1854.

June 13.

• Case of
PETUMBER
BAG and an-
other.

prisoners bore a good character, prior to their apprehension in this case, and in their defence, they urge nothing which deserves attention. They state the case of dacoity has been made out against them through the instrumentality of the zemindar of their village, who owed them a grudge. This is unsupported by any credible evidence, I convict them both of dacoity with wounding and I sentence them to twelve years' imprisonment each with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and J Dunbar.) There are so many circumstances of a most suspicious nature in this case, that the Court can place no reliance on the truth of the several reports from the darogah, or on the veracity of the evidence adduced to convict the prisoners. It is stated that two burkundazes on patrol, finding the chowkeedar Sumbhu prisoner No. 2, absent, asked where he was and the people of his house immediately replied, that Petumber prisoner No. 1, had taken him away, and that this being reported to the darogah, he with the mohurir, some burkundazes and others, his dependants, proceeded to Petumber's house, and finding him out, surrounded the house, and soon saw about a dozen of persons coming with plunder, when they apprehended Sumbhu and Petumber, and secured a portion of the plunder. Now it is in evidence, that Sumbhu bore a good, and Petumber is declared by the police to have been a bad, character, why then so much suspicion against Sumbhu? and extraordinary, that Sumbhu's family should so readily have told, that he had gone away with a bad character! Again curious, that only the two, Petumber and Sumbhu, should have been seized, and all the rest escape with their plunder, and not be followed up by some of the many who were with the police! It is further remarkable that the two seized should have denied having committed any lacoity in the face of plunder being found on them, yet have confessed that they had gone out to perpetrate a dacoity! Immediately afterwards, intimation is brought of a dacoity at the prosecutor's house, and that the two prisoners together with six or seven others are named as distinctly recognized; and subsequently this is testified to by several eye-witnesses. For instance, four witnesses recognized, Dookeeram Harree, Cheeroo Bagdee, and Keetace Bagdee, and those witnesses declared this almost immediately, that very night—or next morning, which is proved by above seventy witnesses, and in addition to all this in the case of Cheeroo Bagdee a *lota*, identified by the prosecutor and three witnesses, was found in his house, and he was proved to be a bad character, yet the darogah, who inserts all this in his final report to the magistrate, states that there was not sufficient proof to apprehend them at once. This is, we believe, unprecedented in a darogah, who seldom or never overlooks a case of the slightest recognition. The conviction of the two

prisoners, petitioners, before us rests on the recognition of them by the prosecutor and his witnesses, and the finding of articles of plunder on them. Prosecutor recognized Sumbhu and Cheeroo Bagdee with clubs and Keetay Bagdee with a *moosal*. Witness Teenkourree recognized Keetay and Cheeroo with swords, Dookahee with a bamboo spear, and Petumber with nothing. Witness Mudoo Nundee, recognized Petumber with a bamboo spear.

The only article of plunder found on Petumber was a silver chain, which he is alleged to have claimed as his own. Nothing was found on Sumbhu, the other articles of plunder are alleged to have been found in a *sursoo* field close to where Sumbhu was seized. On the other hand, the witnesses of Petumber have testified to his being a respectable person, to his having four ploughs and oxen, and cultivating on a rental (jumma) of one hundred and fifty rupees, and that his expenses are commensurate with his means. His character was once inquired into, but nothing on record to shew on what occasion. Sumbhu is admitted even by the police, to have borne a good character. Not satisfied therefore with the evidence against the prisoners, we acquit them and order their release.

PRESENT:

A. DICK, AND J. DUNBAR, Esqs. *Judges*.

GOVERNMENT AND MUSSUMUT ADREE,

versus

SHEOPERSON ROY (No. 3.) AND BHUNJUN ROY
(No. 4.)

Shahabad.

CRIME CHARGED.—Committing rape on the person of Mussumut Adree, the prosecutrix.

1854.

Committing Officer.—Mr. H. C. Richardson, officiating magistrate of Shahabad.

June 15.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 23rd May, 1854.

Case of
SHEOPERSON
ROY, and another.

Remarks by the sessions judge.—The circumstances of this case are as follows.

The prosecutrix was gathering cow-dung near the river, when the prisoner seized her and, dragging her by main force some feet from the spot, violated her person.

The prosecutrix after the deed still held him by the waist, screaming for help, when prisoner, No. 4, came, and striking her in the face, released the other prisoner, and both escaped.

The prisoners were charged, the one with rape and the other with being accessory thereto. Convicted on the evidence.

The two witnesses noted in the margin,* saw the whole proceedings from a short distance.

* Salamat Ally and Jalebiab.

1854.

June 15.

Case of
SHEPHERSON
ROY and an-
other.

Witnesses Nos. 3 and 4 came up, attracted by the cries of the prosecutrix, and saw prisoner No. 4, extricate prisoner No. 3 from the grasp of the prosecutrix.

The prosecutrix filed her complaint direct before the magistrate three days after the occurrence.

The defence of prisoner No. 3 is that one Akbur Jolaha, a connection of the plaintiff, was punished as a *budmash* on his report and that this false accusation has been brought in revenge. He further pleads an *alibi* at a *khullean* some yards off.

No. 4, pleads an *alibi* at Beshunpore, about sixteen miles from the spot.

The *futwa* convicts the prisoners and declares them liable to *accoobut*.

There can be little doubt of the prisoners' guilt.

The two eye-witnesses are lads of fourteen and thirteen, both quick-witted and intelligent, they are the last persons whom any one would think of *suborning*, and from their animated and graphic mode of narration, the court was fully impressed with a conviction of their truth. The prosecutrix herself was overpowered with affliction throughout the proceedings and her manner and deportment strongly attested the truth of her statement. The defence of the prisoner No. 3, is irrelevant and absurd. The case referred to by him appears to have no connexion whatever with this, and the evidence adduced is altogether inconclusive.

The place, in which he alleges he was at the time, is some yards only from the spot and therefore to some extent strengthens the prosecution by shewing that according to his own statement he was close at hand.

The defence of prisoner No. 4 is not satisfactorily established.

The prisoner, No. 3, is a man in the prime of life, stout and muscular, the prosecutrix is small and weakly.

The case is fully proved. The crime appears to be becoming very prevalent.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and J. Dunbar.) We are of opinion that the crimes charged, are brought home to the prisoners respectively on sufficient evidence. The defence offered by prisoner No. 3 is absurd. His witnesses themselves admit that the place, in which he asserts he was at the time when the act is said to have been committed is close to the spot. The evidence tendered on behalf of No. 4, is extremely vague and utterly unworthy of credit, as opposed to the clear and consistent statements of the witnesses for the prosecution. We convict prisoner No. 3 of rape, and prisoner No. 4 of being accessory thereto after the fact; and with reference to the perfectly unprotected state of the woman, who appears to be an orphan, as the wife of a soldier

on service, and to the increased prevalence of the crime, noticed by the sessions judge, we sentence prisoner No. 3, to imprisonment for seven, and prisoner, No. 4, to imprisonment for four years, both with labor in irons.

1854.

June 12.

Case of
SREEDHUR
ROY and an-
other.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT,

versus

SREEDHUR GHOSE.

Beerbhoom.

CRIME CHARGED.—1st count, wilful murder of Ramlall Ghose ; 2nd count, accessory before and after the fact of the above mentioned wilful murder.

1854.

June 16.

Case of
SREEDHUR
GHOSE.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. H. Rose, officiating magistrate of Beerbhoom.

Tried before Mr. W. T. Taylor, officiating sessions judge of Beerbhoom, on the 21st March, 1854.

Remarks by the officiating sessions judge.—The prisoners Nos. 2 and 3,* were committed by the acting magistrate of Beerbhoom,—the 1st charged with the wilful murder of Ramlall Ghose and the 2nd of being accessory before and after the fact of the above mentioned wilful murder.

The prisoner was acquitted, the evidence against him being considered untrustworthy.

The prisoners and deceased are Gowallas.

This is a case of fratricide, and from the evidence before the court it would appear that the deceased and his brother (prisoner No. 3,) were quarrelling about some milk, which the latter had in a vessel, and that the former had hold of the hair of the head of his brother, that prisoner No. 2, seeing his brothers fighting, took a *lattee* and struck the deceased a very severe blow on the head, from which he died the following day.

The prisoners pleaded not guilty and urged an *alibi*, to support which they called two witnesses. They further declared that their brother was attacked by a Brahmune Bull and was thrown on his head against a bamboo lying on the ground, they heard a noise and ran to the spot, and found their brother senseless, and that he died next day from the effects of the fall.

The jury found the prisoner No. 2, guilty of culpable homicide and prisoner No. 3, they acquit.

The court agrees with the verdict of the jury and considers the evidence of the witnesses for the prosecution, has clearly

* Acquitted by the sessions judge.

1854.

June 16.

Case of
SREEDHUR
GHOSE.

shewn, that the deceased was struck on the head by his brother when quarrelling with prisoner No. 3, that the prisoner No. 2, from the circumstances of the case, did not with malice pre-pense intend to take away life, but acted at the impulse of the moment more with the intention of separating his two brothers.

From the evidence of the witnesses the *lattee* or "*holka*" used by prisoner was a dangerous weapon, and on this account he is greatly to be blamed and was unjustified in striking his brother with the force he did on a vital part; under these circumstances the court orders prisoner No. 2, to be imprisoned without irons for three (3) years and to pay a fine of 200 rupees, in lieu of labor within one month from this date. Prisoner No. 3, to be released.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) We cannot concur in this conviction. It appears that there was a previous enquiry into this case, when the parties accused, including the prisoner, were discharged by the magistrate for want of proof. Subsequently on the report of an informer another enquiry was directed through a different darogha, who obtained, it does not appear how, the evidence of four eye-witnesses. These men are all Mahomedans, and represent themselves to have casually witnessed the assault when passing by the house. They do not explain their presence on the spot at the time of the alleged occurrence in a trustworthy way; and even if the deceased met his death as stated, we doubt very much whether the witnesses saw what they describe. There is too much reason to think that the evidence has been got up by the darogha, who conducted the second enquiry, in his desire to secure a conviction. We acquit the prisoner and direct his release.

Moorsheda-
bad.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, Esqs., *Judges.*

1854.

June 16.

Case of
RADHAKRIST.

GOVERNMENT,

versus

RADHAKRIST.

The guilty knowledge of the prisoner was presumed from his assuming a false character.

CRIME CHARGED.—1st count, forgery in having fraudulently prepared or caused to be prepared two seals, in imitation of those belonging to Meer Hossein Alce and Wajeonissa Khanum, and forged therewith certain receipts for monies on account of stipends due to the said Meer Hossein Alce and Wajeonissa Khanum; 2nd count, having knowingly uttered the said forged receipts and in virtue thereof received Rs. 85-5-4, from the treasury of the agent Governor General at Moorshedabad.

CRIME ESTABLISHED.—Uttering forged document.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

1854.

June 16.

Case of
RADHAKRISH.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 20th April, 1854.

Remarks by the sessions judge.—The prisoner in this case had lately come from Patna, and taken up his abode with his brother-in-law, Shunkurloll, who resides in the city and is employed generally as a mookhtear in the office of the agent to the Governor General.

On the 13th January, 1854, a little before sunset, the prisoner came to the office of the agent to the Governor General, with duplicate receipts stamped with the seals of Wajeonissa Khanum and Meer Hossein Alea, who are Nizamut stipendiaries and gave them to the treasurer of that office, together with a note to his, the treasurer's, address. The treasurer believing the receipts and the note to be genuine, gave him Rs. 85-5-4, the monthly stipend of the said Wajeonissa Khanum and Meer Hossein Alea for December, 1853. The prisoner, at the time of taking the money, mentioned that his name was Delwar Alea.

About a week after, Meer Hedyet Alea, mookhtear, on the part of Wajeonissa Khanum and Meer Hossein Alea, came to the agent's office with their duplicate receipts for the purpose of obtaining their stipends for the month of December. The receipts and the note previously presented by the prisoner were produced and the seals stamped upon them were compared, with those affixed to the receipts brought by Meer Hedyet Alea. The difference was immediately detected, and Neelmadub, a mohurrir, under the treasurer, who had recognized the prisoner, when he took away the money, went to the city of Moorshedabad in search of him and finding him in the *chouk*, apprehended and brought him to the agent's office, where the prisoner put in a paper, explaining the circumstances under which he took away the money. He stated that he had received the receipts and the letter from the mookhtear Shunkurloll, and had given him the money, and that he Shunkurloll, had directed him to ask for the money under the name of Delwar Alea. He was subsequently made over by the agent to the magistrate, who committed him to the sessions for trial.

The witnesses, Meer Hossein Alea and Hedyet Alea, deposed to the receipts being forged, inasmuch as the seal affixed to them were not the seals belonging to Meer Hossein Alea and Wajeonissa Khanum, and that they did not forward any receipts with the prisoner. The receipts, which were filed by Wajeonissa Khanum and Meer Hossein Alea on a former occasion, and to which their seals were affixed, were produced in court and compared with those filed by the prisoner. The difference between them was self-evident.

1854.

June 16.

Case of
RADHAKRISHN.

The witnesses, Mr. Purvis, treasurer in the agent's office, Neelmadub, mohurir, and Radhakant Poddar proved that the prisoner took away the money by uttering the forged receipts.

The witnesses on behalf of the prisoner stated nothing in exculpation.

Although the prisoner does not confess that he committed the forgery, and charges Shunkurloll as being the principal, yet his admission before the Governor General's agent and the magistrate, to which he adhered in the sessions court that his relative, Shunkurloll, had given him the receipts and the note and that it was by his desire he had gone to the agent's office with the receipts in question, and obtained the money, which he had delivered to Shunkurloll, together with the evidence of the witnesses on the part of the prosecution, and the fact of his having given a false name in order to obtain the money, though this part of the transaction he denies, there can be no doubt that the prisoner is guilty of the 2nd count, with which he is charged, and that he uttered the abovementioned receipts, knowing them to have been forged and by means of them obtained Rs 85-5-4, from the agent's treasury.

The case was tried with the aid of jurors, who declared that the prisoner was guilty of having knowingly uttered the forged documents above alluded to, and obtaining Rs. 85-5-4, by means of them. In this finding, I concurred, and convicting the prisoner of that offence upon full legal proof, sentenced him as stated in the proper column.

I notice that the magistrate omitted to examine Shunkurloll, with whom the prisoner resided, and who has been charged by him as the principal in this case.

Sentence passed by the lower court.—To be imprisoned for the period of five years with labor without irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) In appeal the prisoner allows all but that he was cognizant of the fraud.

There must, however, have been guilty knowledge on his part, as the prisoner signed a false Mussulman name to the receipt, and being a Hindoo, it is but reasonable to presume that he could not have passed himself off as a Mahomedan without making his dress and appearance correspond with the character he assumed, and that he assumed the character from a fraudulent motive.

We see no reason to interfere with the sessions judge's order, and reject this appeal.

PRESENT :

H. T. RAIKES AND B. J. COLVIN, Esqs., Judges.

GOVERNMENT,

versus

GOREE NUSSOO.

Rajshahye.

1854.

June 16.

Case of
GOREE NUSSOO.

CRIME CHARGED.—Wilful murder of Wallee Takazgeer.

Committing Officer.—Baboo Gopaul Lall Mitter, deputy magistrate of Nattore.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 18th May, 1854.

Remarks by the sessions judge.—The charge being murder, and the *futwa* one of *kissas*, renders the reference unavoidable.

The first witness, a female, and as usual the *teterrima causa* of all, by name Tilkee Aurut, deposed that the deceased, with whom she had a *liason* was sleeping at her house on a Sunday night, towards the end of Fagoon, when about one and a half *pohur* of the night, or between 10 and 11 P. M., the prisoner came to her house, and asked whom she had in the house with her, "bring him out." That she replied there was no one, but the deceased, though she entreated him to remain quiet called out, "who will or who dare beat me," and on his going out the prisoner with a bamboo used to fasten the door, struck him and he fell down at the threshold; a little while after, she went out and found the deceased lying in the *verandah* of her step-mother's house, and three persons sitting near him. On perceiving that the deceased was not dead, she went into the house and slept. Next day she heard from the prisoner that they had left deceased in his own house. The stick belonged to the prisoner's house, who lived in the same enclosure, and with whom she formerly had an intrigue. Her husband was not at home that night. To a question by the law officer, she answered, "she did not see the prisoner strike the blow, only heard it given." "The deceased opened the door himself." The witness then described the size of the stick, which she saw in the prisoner's hands who put no question to the witness.

The prisoner acknowledged that he killed the deceased, supposing him to be another man. As it was strongly presumable that he intended to kill that person, he was held responsible for the death which occurred and sentenced to transportation for life.

This witness,* who was the step-mother of the last, deposed that the prisoner, and the witnesses numbered 10, 11, and 12, in the calendar, came to her house and asked for a light to look at Wallee, who had gone to Tilkee's house, where Goree had struck him a blow; she gave the light and they looked at him in the *verandah*, but she did not go out herself to see what had happened. She afterwards heard they had taken and thrown him out in a *mdt* or plain. This the prisoner told her.

* Witness No. 13.

1854.

June 16.

Case of
GOREE NUS-
SOO.

A chowkeedar,* found the deceased lying on the *mat*, when he went and told his mother, who with his sister and Kartick chowkeedar came and carried him home. Deceased on coming to his senses said the prisoner had struck him on the bidding of another person named, he saw a fracture on his skull.

† Witness No. 15. The deceased's† mother confirms the above and also repeats ~~that~~ the deceased told her about his going to Tilkee's house, when the prisoner struck him with a *lattee* or stick; he died towards the close of Monday night, or before sun-rise or Tuesday, or when one *pohur* remained; he had a *hason* with Tilkee for five years before.

‡ Witness No. 17. This is the other chowkeedar,‡ who assisted to carry the deceased home and reported his death at the thannah. Deceased did not tell him who struck him; all his body and cloths were covered with blood.

§ Witness No. 18. Saw§ the deceased being carried home and he helped to take him there. Did not then hear who had killed the deceased.

|| Witness No. 19. The deceased's wife|| deposed that she heard her husband say the prisoner had struck him, he said nothing more, cannot say if he thought he would not survive. She did not think he would. She added, that there was no quarrel between the prisoner and her husband.

The witnesses to the *sooruthal* attested it and deposed to blows on the head, and other parts of the body, as if given with the fist; and a *lattee* was found at Tilkee's house, three cubits in length and eight fingers in circumference.

The civil surgeon, who held a *post mortem* examination on the body, deposed that the skull was fractured, and there was blood extravasated on the brain, and as there were *two* wounds there must have been more than one blow given, he supposes with some blunt instrument, "a stick or something of that description," death was caused by the fracture of the skull.

The prisoner when called upon to plead, admitted he had given the deceased one blow with a stick. He also admitted making the *mofussil* and *foujdaree* confessions when read over to him.

From the evidence, as well as three confessions, there can be no question or doubt the deceased was caught intriguing with another man's wife; and that the prisoner, who went to the house, struck him with a stick. Whether he was the only assailant, I am not prepared to say, but it is evident from the deceased being found after in a plain, some distance off, that others must have assisted in carrying him there.

The presumption is, that the parties who took the deceased first to the *verandah* of Beemola Bewah's house must have been consenting (if they did not help) to his removal from thence, and therefore they were accessaries after the fact to the murder.

On this account I have not examined the witnesses Nos. 10, 11 and 12, in the calendar at all. Both the deceased and prisoner say, No. 10 gave orders to strike.

1854.

June 16.

Case of
GORRE NUS-
SOO.

Though the offence amounts to murder, I think there were some extenuating circumstances. To adopt the words of a former judge of the superior court (Mr. Courtney Smith) the deceased in a manner, "*provoked his fate.*"

Had he not gone to the house of Tilkee, another man's wife, or had he taken her advice and not discovered himself, by opening the door and rushing out, the chances are he would not have met with his fate, or death.

The prisoner was, it should be noted, a neighbour of the woman's, and probably was a friend of her husband, who again was absent from home on the night that the deceased went to the house, to have adulterous intercourse with his wife, and having had similar intercourse with her, he was not the person, that under the law, whether Mahomedan or Christian, should have struck the first blow. It is *possible* he never contemplated killing the deceased, when he struck him on rushing out of the house. Neither the mother or wife of the deceased say the prisoner had any quarrel before with the deceased, and it is not likely they would conceal the fact, if there had been enmity between them.

I therefore do not concur with the law officer that *kissas* is incurred, and had the deceased not been removed to the *mât*, after he was carried to Beemola Bewah's *verandah*, I should have been inclined to recommend a much higher sentence than what I now propose should be adjudged.

Convicting the prisoner of being a principal in the murder, I would, with reference to former precedents, remit the sentence of death, which the *futwa* declares incurred, and sentence the prisoner to fourteen years' imprisonment with labor and irons.

The stick unfortunately fell out of the *hackery*, when being brought to this station from Nattore, so we have not been able to judge of its being a dangerous weapon or the contrary, though there can be no doubt that the fatal blow was given with a *stick*.

I have to apologize for the delay that has taken place in laying the trial before the Court, but first the mohurir, whose duty it is to prepare the transcript, fell ill and has now got the small-pox, and since the first of the month I have been unwell myself occasioned by constant attendance at the cutcherry during the latter part of May when the heat was very great.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) The prisoner has confessed throughout that he struck the deceased, under the impression that he was another person called Guggun, who he supposed had come to intrigue with Musst. Tilkee. It was only when he had

1254. knocked deceased down that he found out his mistake. Steps were immediately taken to restore the deceased to his senses, which succeeded so far that he asked for water, and neighbours were called in, to whom the circumstance was communicated. This shows that there was no intention to take Wullee's life, but there is certainly much reason to presume that the prisoner when he struck, had the intention of taking Guggun's, and he is therefore as legally responsible for the result, as if Guggun had been struck. He cannot however have the benefit of the concern which was evinced to recover the deceased, when he was known to be Wullee. Under these circumstances we concur with the sessions judge in convicting the prisoner of murder, but we consider the term of imprisonment for fourteen years proposed, to be inadequate, and that justice will not be satisfied with less than imprisonment in transportation for life with labor and irons, to which we accordingly sentence the prisoner.

June 16.

Case of
GOREE NUS-
300.

PRESENT :

H. T. RAIKES, AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT ON THE PROSECUTION OF BIRMO
PODEENEE,

24Pergunnahs.

versus

UKOOR POORKAIT (No. 1.) AND BHOWANEE
PODEENEE (No. 2.)

1854.

June 16.

Case of
UKOOR POOR-
KAIT and an-
other.

CRIME CHARGED.—Wilful murder of prosecutrix Birmo Podeenee's son Shuhur Pode.

Committing Officer.—Mr. J. M. Lowis, assistant exercising the powers of joint-magistrate in the 24-Pergunnahs.

Tried before Mr. J. S. Torrens, sessions judge of the 24-Pergunnahs, on the 27th May, 1854.

The prisoners were convicted on their own confessions corroborated by the appearance of the corpse, and by the evidence of wilful murder. Sentence death.

Remarks by the sessions judge.—The prisoners are charged with the wilful murder of Shuhur Pode. Before the sessions both plead not guilty. At the police thannah, on the 10th of February, they confessed to the crime, also before the magistrate.

The case was tried by me with assistance of assessors, who convict the prisoners. The prosecutrix is the mother of the deceased. It appears that her son, aged about twenty, had been employed for a month preceding the event, as a laborer by the prisoner Bhowanee, in the village of Bagakhalee, where prosecu-

trix also resides, about two and half *coss* from the thannah of Bistopoor. The other prisoner, Ukoor, had also been servant of Bhowanee for some years, and resided with her and her

1854.

June 16.

* Witness No. 1. widow daughter Harrinee,* aged about sixteen years, with whom he had carried on

Case of
Ukoor Poom-
kait and an-
other.

an illicit intercourse.

On the deceased having also come to reside as a servant, he likewise intrigued with this Harrinee, and had been warned by both the prisoners to desist. According to their confessions before the police and the magistrate, it appears that they had ascertained on the night of the 8th of February that the deceased was sleeping with Harrinee, when they both proceeded together, dragged him from the *verandah*, and strangled him; that they then took the body to a pond adjoining their house, and sunk it, representing that the deceased had fallen in on his having gone to drink water at the pond. This representation was made to Kisto Poda, brother of the prisoner Bhowanee and Goo-roo Poda, a neighbour, who with the prisoners took out the corpse and brought it back to Bhowanee's house. At this time the chowkeedar of the village arrived and, on hearing the account given, suspecting that the deceased had been murdered gave information to the thannah.

The witness Harrinee, No. 1, distinctly swore before the magistrate in corroboration of the above confessions. Before the sessions she at first stated that she did not recollect the details and was reluctant to give her evidence at all, but after being questioned, stated that what she had deposed before the magistrate was correct, that the deceased had been taken away from the *verandah* where she had been sleeping with him, and strangled in her presence.

The witness No. 2, named in the calendar, was not examined, as he is exceedingly young and shown not to comprehend the nature of an oath. He is represented as having also been a servant employed by Bhowanee in charge of cattle, to have been at the house on the night of the occurrence and along with Harrinee to have witnessed the strangulation of the deceased. On the 9th of February this boy detailed these circumstances to the darogah.

† Witness No. 6. The body was examined by Mr. assistant surgeon Strong,† on the 11th of February; his report to the magistrate, dated the 11th of February states that he could not *declare* the cause of death on examination of the corpse. His evidence before the sessions is to the same effect, stating that the brain was free from any blood. The appearance of the lungs he stated indicated a possibility of death having been caused by drowning, but he states it may also be possible that this appearance being presented, might have resulted from strangulation. This evidence, it is to be regretted,

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KAIT and an-
other.

in itself affords no aid in determining how death was caused, and it is only in the confession of the prisoners themselves that there is any minute description given as to how life was destroyed. They state that they both together throttled the deceased in front of the house and that he expired immediately.

The several depositions of the prosecutrix before the thannah; before the magistrate and before the sessions vary as to the mode by which it first came to her knowledge that her son had been murdered. The prisoners however having confessed before the magistrate, I can see no reason for rejection of their confession. It is clear from the evidence of Harrinee that they seized the deceased both in a state of anger, and though her evidence may not be the most satisfactory, as to having seen them actually deprive the deceased of life, taking their confessions and all the circumstances of the case, I can see no reason to doubt their guilt.

The likelihood of such instant death, as represented in the confessions, without a struggle is from the description there given of how it was caused a matter of question, though there is, I believe, little doubt that death can be inflicted by continued and sudden pressure such as described.

The witness Harrinee gave her evidence so reluctantly before the sessions, that I could not cross-examine her so fully as I desired, but her very reluctance is in favor of what she stated being in the main true.

I agree with the verdict of assessors; chiefly coming to this determination on the confessions of the prisoners and as the consequence of their guilt of the crime charged, I consider them liable to capital punishment according to which view it is my duty to submit the case to the Court.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and B. J. Colvin.) After attentively considering the proceedings in this case, we think there is no reason to doubt the truth of the prisoners' confessions.

It appears that on the night in question, when the prisoners raised the alarm that the deceased had been accidentally drowned and pretended to use their best endeavours to restore animation, the neighbours, who came to render assistance gave no credence to the tale, and even at that time so strongly suspected the prisoner Ukoor of having murdered the deceased, that the chowkeedar immediately placed him in custody, and reported his suspicion to the darogah. Appearances must therefore even then have been against the prisoners, as the story they told and the stratagem they practised, failed to impose upon the villagers.

The medical evidence too goes far to establish the fact of the deceased having been throttled or strangled by the hands of his murderers. The medical witness states that "the cells of the

lungs were congested and filled with blood, I do not know what that might have been caused by. I think it possible that if a person was suffocated by the neck being pressed, or by being choked, the state which I perceived in the lungs of the deceased might be caused thereby. The reason for my having examined the brain of the deceased carefully was to see if there might be any appearance, indicating a violent death by strangulation; in such cases, it is frequently observable that both the brain and the lungs are inflamed, and the vessels surged with blood: I did not see any marks of pressure on the throat or any swelling there or elsewhere on the body."

Thus it appears that the only marks of a violent *death* by suffocation were observable in the lungs of the deceased, and such, we believe, would be the natural consequence of strangulation or pressure on the throat by the hands of another. Such a mode of death would cause congestion of the lungs without such an appearance of the brain or visible marks on the neck; pressure by the hands alone not being likely either to leave outward marks, or to create the same appearances internally on the brain, as would inevitably result from a cord or ligature applied to the throat for the same purpose. The medical evidence therefore entirely agrees with the mode of death described by the prisoners in their confessions and detailed in the deposition of the girl Harrinee, who deposes to having seen the prisoners commit the murder. Excepting the state of the lungs, after death, no other symptoms of death by drowning are mentioned, and there is no reasonable ground in our opinion to attribute death to any such cause.

Accepting then the confessions as genuine, corroborated as they are by Harrinee and the *post mortem* examination, we see no reason to doubt the guilt of both the prisoners, and convict them of wilful murder, and sentence them to suffer death.

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Case of
Ukooa Poora-
kait and an-
other.

PRESENT:

A. DICK, AND J. DUNBAR, Esqs., Judges.

GOVERNMENT AND RAMSOONDER MAZOOMDAR,

versus

Moorsheda-
bad.

MONOHUR BAGDY (No. 15,) CHUNDER BAGDY (No. 16,) AND LUCKHEE BAGDY (No. 17.)

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Case of
MONOHUR
BAGDY and
others.Prisoners
convicted of
dacoity with
torture, sen-
tenced to 12
years' impris-
onment by the
sessions judge.
Appeal reject-
ed.

CRIME CHARGED.—1st count, prisoners Nos. 15 and 16, dacoity with torture in the house of the prosecutor, Ramsoonder Mazoomdar, from which property to the value of Rs. 205-7-9, was plundered; 2nd count, privy to the said dacoity before and after the fact. Prisoner No. 17, dacoity with torture in the house of the prosecutor, Ramsoonder Mazoomdar, from which property to the value of Rs. 205-7-9, was plundered.

CRIME ESTABLISHED.—Dacoity with torture.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 6th April, 1854.

Remarks by the sessions judge.—On the night of the 28th January, 1854, a gang of dacoits attacked the house of the prosecutor, and after burning him with a lighted *mussal*, broke open the chests, &c. and carried away property to the value of Rs. 205-7-9.

The witnesses to the *sooruthal* prove that a dacoity took

At the time of the occurrence, the prosecutor recognized the prisoners, Nos. 15 and 17, who were accordingly arrested. The prisoner No. 15, confessed and implicated the prisoner, No. 16, who was therefore subsequently arrested, and he confessed.

The prisoners, Nos. 15 and 16, also confessed before the magistrate, but they all denied the charge in this court.

Two witnesses as well as the prosecutor recognized the prisoner No. 15, on the night of the occurrence and the prisoner No. 17, was also recognized by the prosecutor and three witnesses at the same time.

The prisoner No. 17, was on a previous occasion convicted of being a bad character and sentenced to one year's imprisonment.

It was proved that the confessions of the prisoners were voluntary.

From the evidence of the witnesses to the fact, as also from that of the witnesses to the confession of the prisoners, Nos. 15 and 16, both in the *mofussil* and before the magistrate, the charge against the prisoners was clearly proved.

With reference to the prevalence still of the crime of dacoity in the district, although the torture was not of a very serious nature, I sentenced each of the prisoners to be imprisoned for twelve years with hard labor in irons in banishment and to pay a fine of Rs. 205-7-9, imposed upon the prisoners jointly and severally under Act 16, of 1850.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and J. Dunbar.) The guilt of prisoners Nos. 15 and 16, is established on their own confessions, which are proved to have been voluntarily made. Prisoner No. 17, was recognized by the prosecutor, whose deposition, in which he was named, was taken next day and by three witnesses; he is an old offender and is implicated by both the confessing prisoners, we see no reason to interfere and reject the appeal.

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Case of
MONOHUN
BAGDY
and others.

PRESENT:

A. DICK, AND J. DUNBAR, Esqs. Judges.

GOVERNMENT,

versus

HEERAMUN SINGH (No. 1,) KUNCHUN JHA (No. 2,) HEERA SINGH (No. 8 APPELLANT,) CHUMUN DHANUK (No. 9 APPELLANT,) AND GUNGADDEEN (No. 14.)

Bhaugulpore.

CRIME CHARGED.—Affray attended with homicide of one Nund Lal Singh and wounding.

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CRIME ESTABLISHED.—Affray with severe wounding.

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Committing Officer.—Mr. G. C. Chapman, deputy magistrate of Deoghur.

Case of
HEERA SINGH
and another.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 20th March, 1854.

Remarks by the sessions judge.—Prisoners plead *not guilty*.

Prisoners
convicted of
affray with
severe wounding,
sentenced to
four years' im-
sonment. Ap-
peal rejected.

Witnesses Nos. 1 and 2 are police burkundazes, they prove the affray and identify the prisoners Nos. 1, 2, 8, 9 and 14. Prisoners Nos. 1 and 8 were both wounded by swords or some sharp cutting instruments, vide evidence of Doctor Allan, civil surgeon, taken before this court. Nund Lal deceased was also engaged in the affray, was badly wounded and died probably owing to weakness induced by the wounds, this is not, however, sufficiently clear to maintain the charge of culpable homicide, which is consequently abandoned. Nine men are acquitted for want of evidence to identify them, vide acquittals No. 3.

The prisoners plead variously, some that their party was not the attacking one, others that though on the spot, they took no part in the affray, they bring no witnesses however to support

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their allegations, none of those for the defence named in the calendar have attended at this court, except Ruhmoo, No. 1, who is also the principal witness for the prosecution and whose evidence in defence has been refused by the party naming him.

The law officer brings in a *futwa* of guilty of affray with severe wounding in which I concur, and as there is no direct evidence of premeditation, sentence the prisoners to four years' imprisonment without irons and to pay a fine of fifty rupees each within one month, or in default of payment to labor until the fine be paid or term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and J. Dunbar.) On the 7th instant, the appeal of three of the prisoners was rejected; the remaining two now appeal, viz. Heera Singh and Chumun Dhanuk. The former is clearly proved to have been the leader in the affray on one side. The latter was arrested in the zemindary cutcherry near which the affray took place, by the jemadar, to which it is clear, from the evidence of Buhum Alee burkundaz, he had proceeded with a wounded man of the other party, whom he had bound with ropes in defiance of the remonstrances of the burkundaz. We see no reason to interfere, and reject the appeal.

Bhaugulpore.

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Case of
ETWAREE and
others.

PRESENT:

A. DICK, AND J. DUNBAR, Esqs., Judges.

GOVERNMENT AND KUNHYE SAHOO,

versus

ETWAREE (No. 9,) BOCHAE CHOWKEEDAR (No. 10,) MUSSUMUT MUNGLER (No. 11,) GHEESA (No. 12,) MUSSUMUT JALOO (No. 13,) HULKHOREE (No. 14,) MUSSUMUT NUMTORIA (No. 15,) RUHMUT (No. 16,) MUSSUMUT HINGUN (No. 17,) AND RAMCHURN (No. 18,) APPELLANTS.

One prisoner convicted of administering stupifying drugs to his master with intent to rob him, sentenced to ten years' imprisonment. The other prisoners convicted of receiving stolen property sentenced accordingly. Appeal rejected.

CRIME CHARGED.—No. 9; 1st count, administering poisonous or stupifying drugs to the prosecutor, his master with intent to rob; 2nd count, accessory before and after the fact. No. 10, accomplice in the burglary and robbery of Co.'s Rs. 1815-2 from the house of the prosecutor, and Nos. 10 to 18, receiving stolen property, knowing at the time the same to have been obtained by burglary and theft.

CRIME ESTABLISHED.—No. 9, administering stupifying drugs to prosecutor, his master, with intent to rob and being accessory

before the fact. Nos. 10 to 18, receiving stolen property knowing at the time the same to have been obtained by burglary and theft.

Committing Officer.—Mr. W. T. Tucker, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhauulpore, on the 28th January, 1854.

Remarks by the sessions judge.—Prisoners plead not guilty.

Complainant is a mohajun of the town of Monghyr and lives in the main bazar, his wife is the only other permanent inmate of his house; their servant, Etwaree, (prisoner No. 9,) a lad of fifteen or sixteen, came for the day, going to his own home at night. On the night of the 28th of November last, at about nine, Kunhye and his wife took their usual draught of boiled milk and both almost immediately fell asleep, seemingly under their influence of some strong opiate. The next morning Kunhye awoke, feeling very ill and confused, and sent the boy Etwaree, who had come in as usual and thrown away the remainder of the milk and cleaned the vessels, for two friends who came, and perceiving that the house had been robbed told him so, and immediately gave information at the thannah, in which Neaz Ally, jemadar, witness No. 6, went to the house and made preliminary investigation, taking from complainant a list of property, valued at Rs. 1664-12, including all the effects subsequently named, except 150 Rs. cash and an English knife, No. 10, which were subsequently entered. At this time complainant's suspicions did not rest on any one. On the 28th of November, the sudder darogah, Deanut Ally, witness No. 43, having ascertained from the appearance of the doors and locks of the house that the entry must have been given by some one from the inside, and judging from the fact of those boxes only containing valuables having been broken open and

* Etwaree.

ransacked, that an inmate of the family* must have been concerned, apprehended Etwaree Dhanook, prisoner No. 9, who at once confessed that one Hulkhoree Dhanook his uncle, prisoner No. 14, had on the day before the robbery given him a fine yellow powder to put into Kunhye's milk, which he had done while it was boiling; that Hulkhoree had further questioned him about where Kunhye slept and where he kept his valuables, that on the night of the robbery or about four in the morning of the next day, Hulkhoree had called him from where he slept to his own house, and there he saw Hulkhoree bury two bags and a *lotah* full of rupees in the floor of his house, and that he said they were stolen from Kunhye.

This confession was repeated with very slight variation before the magistrate.

Hulkhoree.—Hulkhoree was then apprehended, 28th November, and stated that on the night (about 3 A. M. of the 27th) of the robbery he was outside his own house in a hollow behind it,

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when three persons came by (among them Ruhmut prisoner No. 16,) who gave him two bags of rupees and told him to be silent about them; of this money 8 Rs. were on his person, which he gave up, the remainder he had given to his mother-in-law, Muntooria, prisoner No. 15, to keep; of these Rs. 75, he said were his own: he repeated the same before the magistrate.

Bochae, Munglee.—On the 29th, Bochae chowkeedar and his wife Munglee, prisoners Nos. 10 and 11, were apprehended on the showing of Kunhye Misser witness No. 11, who stated to the darogah that he had heard them talking about the money and how they should conceal it, and had seen Munglee take an earthen pot full into a neighbour's house, where Munglee was found by the police and Rs. 368-10 in an earthen pot (Nos. 3 and 4,) hid under some grain. Bochae was not there at the time, and Munglee denied that she was Bochae's wife. Bochae in his defence at the thannah (November 29th,) said, that while he was on his rounds the night of the robbery, two men (one of them Ruhmut No. 16,) came by him with rupees in a cloth, he seized them, when they left the rupees and ran away, that he gave these to his wife, Munglee, to put away with fifty of his own. The same was repeated before the magistrate.

Munglee (November 29th,) said that the money found in Sheo Dutt's house was that given her by her husband to put away, she did not know where he got it from, did not hide it in her own house because the police were sure to search it. Before the magistrate, says she pointed out the money because she saw her husband subjected to ill-treatment on its account.

Gheesa, Ramchurn, Jhuloo.—On the 30th, Gheesa, prisoner No. 12, Ramchurn No. 18, and Jhuloo No. 19, were apprehended on the showing of others formerly seized. In Gheesa's house was found 53 Rs. No. 5. In Ramchurn's 85 Rs. (Nos. 23 and 24.) In Jhuloo's 24 Rs. (No. 22.)

Gheesa in his defence at the thannah (November 30th,) said he was out on the road at 5 P. M. of the 27th November, when he met four men running, (one of them Ruhmut prisoner No. 16,) he pursued them when they flung a *lotah* into a well, and some money fell from them on the road, which he, Gheesa, picked up and concealed in the *chupper* of his house; he repeated the same before the magistrate.

Ramchurn (30th November,) said that of the money found in his house, the 17 Co.'s Rs., was his own, the remainder 68 Siccas was given him by Hulkhoree's mother; the same was repeated before the magistrate.

Jhuloo said (30th November,) the money found in his house was his own, that his house was searched because he was Ramchurn's uncle.

Muntooria.—Musst. Muntooria, prisoner No. 15, mother-in-law of Hulkhoree, was apprehended either on the 29th or 30th

November, (the calendar says the 30th, the darogah's final report of the 9th December, says the same, while the defence at the thannah and search of house are both dated the 29th November), 196 Rs. in an earthen pot were found in her house.

Muntooria (29th November,) said the money in the pot as found in her house was given her by her son-in-law, Hulkhoree, she did not know whence it came, it now appears to be part of the property stolen. Before the magistrate stated that Ramchurn's mother gave her the money.

Ruhmut, prisoner No. 16, was apprehended on the 2nd December, in the Gogree thannah, a day's journey from Monghyr, across the river, his house had been searched on the 30th November, and articles Nos. 7 and 8, six *sicca rupees* and a pair of silver armlets were found in his house concealed in the roof under the tiles. On his person, when taken near Gogree, were found articles Nos. 9 and 10, viz. 35 Rs. and an English knife. On the 3rd December, he further pointed out concealed in a tomb in the town of Monghyr, articles Nos. 11 to 14, inclusive, gold and silver ornaments. On this date his mother Hingun, No. 17, was apprehended, and pointed out buried in her premises near the privy (Ruhmut and his mother Hingun live together in the same house) 140 Rs.

Ruhmut in his first answer at the Gogree thannah (December 2nd,) said that he had received the rupees and ornaments from Gheesa and concealed them in a sugar-cane field near his house. In his second, at Monghyr thannah (December 5th,) he said he had tried to borrow money from Gheesa's master, but he had instead sent him by Gheesa the articles in question which were found in the tomb by his showing. This last story was repeated before the magistrate.

Hingun (3rd December,) said that Ruhmut had given her 365 *sicca rupees* to keep for him, of which Hyatee, prisoner No. 21, her husband's brother, had taken 225 to Kummurgunge with him (5th December); said that Hyatee had not taken these rupees and produced 172-8 (No. 16,) buried near her house. Repeats much the same before the magistrate.

Hyatee had been apprehended on the 3rd of December at Kummurgunge about eighteen miles distant and being taxed with taking the 225 rupees alluded to by Hingun, stated that she had it buried in her house and he would point it out; three rupees (No. 18) found buried in his house, and one rupee twelve annas found on his person, he states to be his own property.

Jhulloo.—On the 2nd of December a further sum of 149 rupees (No. 17,) was found in Gheesa's house produced by his mother, Jhulloo apprehended on the 6th December.

Jhulloo's answer (December 6th,) said, the money was given her by Gheesa.

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On the 2nd December, Gohee, prisoner No. 20, was apprehended in company with Ruhmut in the Gogree thannah, and on his person was found thirty-five rupees in silver and nine rupees, nine annas in pice, Nos. 20 and 21.

Gohee's answer at Gogree thannah (December 2nd,) was, that the money was his own, and he had nothing to do with the robbery. Again at Monghyr (5th December,) he said the same.

These facts are clearly proved by confessions duly attested before this court, and by witnesses hereafter to be named against each of the convicted prisoners.

The defence set up before this court by the prisoners was as follows :

No. 9, Etwaree.—Repudiates his former confessions and denies all connection with the crime charged against him.

No. 10, Bochaee.—Repudiates his former statement and tells quite a different story, asserting that the money found in his house is his own, the produce of his father's and grandfather's industry.

No. 11, Musst. Munglee.—Varies considerably in her story as to the money hid by her ; asserts that it was the produce of former industry.

No. 12, Gheesa.—Says the money found in his house was his own ; does not repeat the story told at thannah and before the magistrate.

No. 13, Musst. Jhulloo.—Gheesa's mother, asserts, that the money found in her house was her own and her sons, the produce of their industry.

No. 14, Hulkhoree.—Asserts the money to be his own and repudiates his former statements.

No. 15, Musst. Muntoria.—States that the money was the produce of the industry of her father-in-law and husband.

No. 16, Ruhmut.—Makes no mention of his former story ; denies having pointed out any of the property ; asserts that the money found on his person was his own ; denies that the knife was found on him.

No. 17, Musst. Hingun.—Mother of Ruhmut, asserts that the money found was her son's.

No. 18, Ramchurn.—Asserts that the money found in his house was his own.

The witnesses called for the defence, generally assert ignorance of the affairs or character of those they are called to defend, and mostly depose to the poverty of the prisoners.

The jury bring in a verdict of guilty against all the prisoners on the charges entered in the calendar ; I concur in the verdict as against Etwaree, No. 9, on the first count, and that part of the second, charging him with being accessory before the fact, and as against prisoners Nos. 10 to 18, inclusive, but I do not consider the charge of receiving stolen property sufficiently proved

against prisoners Nos. 19, 20 and 21, who are consequently acquitted.

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I convict Etwaree, prisoner No. 9, on his own confessions at the thannah and before the magistrate, of administering some stupefying drug to his master with intent to rob, and under the general circumstances of the case of being accessory (witness No. 48) before the fact, and with reference to the heinousness and treachery of the crime, sentence him to ten years' imprisonment with labor in irons.

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others.

I convict the prisoner, Bochaee No. 10, of receiving stolen property knowing it to be stolen, and with reference to the aggravated nature of the crime by which the property was obtained, and prisoner's office as chowkeedar, sentence him to ten years' imprisonment with labor in irons. The evidence against this prisoner is witnesses 1, 2, 3, 6 and 11 and his own discrepant statements at thannah before magistrate and this court.

I convict prisoners, Musst. Munglee No. 11, (witnesses, Nos. 1, 2, 3, 6, 11, 12 and 13,) Gheesa, No. 12, (witnesses, Nos. 7, 8 and 14,) Musst. Jhulloo, No. 13, (witnesses, Nos. 15 and 16,) Hulkhoree, No. 14, (witnesses, Nos. 2 and 8,) Musst. Muntooria, No. 15, (witnesses, Nos. 17 and 18,) Ruhmut, No. 16, (witnesses, Nos. 7, 8, 19, 20 and 21,) Musst. Hingun, No. 17, (witnesses, Nos. 22, 24 and 25,) Ramchurn, No. 18, (witnesses Nos. 7 and 26,) of receiving stolen property, knowing it to be stolen, and sentence them to (7) seven years' imprisonment, the men with labor and irons, the women with labor suited to their sex.

Besides the witnesses above quoted, the general circumstances of the case and the pointing out by the prisoners themselves of the concealed property, their discrepant answers and statements before the darogah, magistrate, and the court, all tend to bring home to them—participation in the crime—which, from its treachery, very dangerous tendency, and facility of execution, I consider necessary to mark by a heavy scale of punishment.

The punishment of the wives and other female relatives of males concerned in this case has been ordered advisedly. With regard to the charge brought home to the prisoners, the women were as much implicated as the men, and the inclusion of them in the punishment will go further to check crime than any amount of enhancement in the men's terms of imprisonment.

The prisoners are further convicted under Act 16 of 1850 to the extent of unrecovered stolen property.

The difficulty of identifying rupees as stolen property, is in this instance less than usual, the poverty of all the prisoners, the concealment, denials, and subterfuges traceable throughout the progress of the case leave no doubt on my mind as to the money found being actually that stolen. The police deserve great credit for their acuteness and activity in following up the clues afforded them by Etwaree's confession and Kunhye Mis-

1854. ser's eaves dropping. I am sorry I cannot extend the praise to the magistrate's preparation of the case; the calendar was very incorrect and the witnesses as therein numbered did not correspond with the letter A., comparative statement of evidence, which is drawn up in a very loose manner. I must mention this fact in order to account for the great length and detail of these remarks which might otherwise have been avoided.

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others.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and J. Dunbar.) The petitioners have urged nothing at all valid or important against their conviction, and after hearing the trial, we are of opinion that there is no cause for our interference with the sentence passed on the prisoners, petitioners, by the sessions judge.

The Court request that the sessions judge will bring to the notice of the magistrate, the very illegible manner in which the thannah record has been written. With great difficulty its meaning was made out.

PRESENT :

A. DICK, AND J. DUNBAR, Esqs., *Judges.*

GOVERNMENT,

versus

NIMCHAND PUDDAR (No. 9,) SHODARAM CHUTTO-PADEY (No. 10,) KALOO CHUCKERBUTTY, ALIAS RAM CHURN CHUCKERBUTTY (No. 11,) KISHTO TANTEE (No. 12,) RAMCOOMAR TEOR, ALIAS BASHÉE BAGDEE (No. 13,) ETBAREE MOSSULMAN (No. 14,) THAKOORDASS SIRCAR (No. 15,) MODUN MOSSULMAN (No. 16.)

Hooghly.

1854. CRIME CHARGED.—1st count, dacoity in the house of Sreram Chuttopadey at Kotrung, on the night of the 3rd May, 1853, in which property to the amount of rupees 2,074-2, was plundered; 2nd count, having belonged to a gang of dacoits.

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PUDDAR and
others.

Committing Officer.—Baboo Chunder Seker Roy, deputy magistrate under the commissioner for the suppression of dacoity of Hooghly.

The prisoners, who were charged with dacoity, and with having belonged to a gang of dacoits, and con- Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 19th April, 1854.

Remarks by the officiating additional sessions judge.—The prisoners were committed by the deputy magistrate, under the commissioner for the suppression of dacoity, and are charged firstly with dacoity, and secondly with having belonged to a gang of dacoits. They plead not guilty to the indictment.

* Witnesses Nos. 1 and 2. The witnesses, marginally* noticed, are approvers on the establishment of the dacoity commissioner, and prove the charge against the prisoners. They detail the particulars of the dacoity committed in the house of Sreram Chaturjea of Kotrung on the night of the 3rd May, 1853, shewing the prisoners' complicity therein, and mention several other instances, in which they took part in dacoities committed at different times and in different places.

† Witness No. 4. The person, indicated in the margin,† proves that the dacoity in question was perpetrated on the date specified.

The prisoners deny the charge and impute malicious and vindictive motives to the approvers, in giving evidence against them. They call witnesses to character, but the testimony does not avail them.

The approvers' evidence is consistent throughout, and the facts detailed therein, as regards the occurrence of dacoity, are confirmed by the records of the several magistrates concerned. The original confessions of the approvers are also thus verified, and present a clear and circumstantial detail, and an assurance is given that they were recorded under circumstances which precluded all possibility of collusion between the parties. I therefore convict all the prisoners of both counts of the charge, and recommend that they be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and J. Dunbar.)

Mr. Norris appeared on behalf of the prisoners Nos. 9 and 10, Nimchand and Shodaram.

Baboo Sumbhoonath Pundit for the prosecution.

After the papers had been read Mr. Norris endeavoured to impress upon the Court the probability that, as alleged by his clients, the approvers had denounced them from motives of enmity, and he also sought to show that there were no sufficient reasons for declaring Nimchand to be an old offender well known to the police, as set forth in the grounds of commitment, entered in the calendar.

Baboo Sumbhoonath Pundit then with considerable force, commented upon the remarks of Mr. Norris, and the documents adduced by him, as inconclusive, and also noticed some observations which had fallen from the Court, in regard to discrepancies and omissions observable in the evidence.

The Court cannot concur in the sessions judge's appreciation of the approver's evidence.

The depositions now given by the approvers on oath must of course be compared with, and tested by, the statements made by them in their original confessions. The following abstract shews that there are omissions and discrepancies of a very serious character.

Loylab approver.

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victed by the sessions judge upon both counts, were acquitted by the Nizamut Adawlut on the ground that the discrepancies between the original confessions of the approvers, and their depositions on the trial, rendered their evidence wholly untrustworthy, especially when uncorroborated by any circumstantial evidence.

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DACOITY No. 3 OF HIS CONFESSION.

The statements in the original confession and before the sessions judge correspond, implicating all the prisoners.

DACOITY No. 5, OF HIS CONFESSION.

Original Confession.

The approver names all the prisoners as connected with this dacoity.

Deposition in Sessions Court.

The approver names all the prisoners save Etbaree, whom he excepts in express terms.

DACOITY No. 6, OF HIS CONFESSION.

Original Confession.

The approver names all the prisoners as connected with this dacoity.

Deposition in Sessions Court.

The approver names all the prisoners save Etbaree, whom he excepts in express terms.

DACOITY No. 7, OF HIS CONFESSION.

The statements in the original confession and before the sessions court, correspond, implicating all the prisoners.

DACOITY No. 9, OF HIS CONFESSION.

Original Confession.

The approver names only *Nimchand, Kishto Bagdee, Ramcoomar Teor, Thakoordass and Modun Mussulman.*

Deposition in Sessions Court.

The approver swears that all the prisoners were concerned in this dacoity.

DACOITY No. 10, OF HIS CONFESSION.

Original Confession.

The approver names all the prisoners in connection with this dacoity.

Deposition in Sessions Court.

Approver does not mention this dacoity.

DACOITY No. 12, OF HIS CONFESSION.

Original Confession.

Modun Mussulman is the only one of the prisoners mentioned in connection with this dacoity.

Deposition in Sessions Court.

This dacoity is not mentioned by the approver.

HIGHWAY ROBBERY No. 22, OF HIS CONFESSION.

Original Confession.

Modun Mussulman is the only one of the prisoners mentioned in connection with this dacoity.

Deposition in Sessions Court.

This dacoity is not mentioned by the approver.

Dhurmo Dass approver.

1854.

DACOITY No. 4, OF HIS CONFESSION.

Original Confession.

Deposition in Sessions Court.

June 17.

The approver names all the prisoners, as connected with this dacoity, except *Kaloo Chuckerbutty*.

The approver names all, making no exception.

Case of
Nimchand
and others.

DACOITY No. 5, OF HIS CONFESSION.

Original Confession.

Deposition in Sessions Court.

The approver named all except *Kaloo Chuckerbutty*.

The approver first named all the prisoners, as connected with this dacoity, and then expressly excepted *Modun Mussulman* and *Elbaree*.

DACOITY No. 1, OF HIS CONFESSION.

Original Confession.

Deposition in Sessions Court.

Approver names all the prisoners.

Approver does not mention this dacoity.

DACOITY No. 6, OF HIS CONFESSION.

The statement in the original confession and the deposition correspond, implicating all the prisoners.

DACOITY No. 3, OF HIS CONFESSION.

Original Confession.

Deposition in Sessions Court.

The approver names all the prisoners.

Approver says all the prisoners were concerned in this dacoity, and names *Nimchand* and *Shodaram* as the sirdars.

DACOITY No. 12, OF HIS CONFESSION.

Original Confession.

Deposition in Sessions Court.

The approver names *Kishto Bagdee* and *Ramcoomar Teor* as connected with this dacoity.

The approver does not mention this case in the sessions court.

DACOITY No. 13, OF HIS CONFESSION.

Original Confession.

Deposition in Sessions Court.

The approver names *Nimchand*, *Shodaram* and *Kaloo Chuckerbutty* as connected with this (river) dacoity.

The approver does not mention this dacoity at all.

It will be seen from the above abstract, that in some cases the approvers have, in their depositions, named prisoners as connected with dacoities, with which they were not connected in their confessions. This might probably enough happen without

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any design on their part, as confessing prisoners may not always recollect the names of all the parties engaged with them in a number of different dacoities, but that they should expressly name persons, as engaged in certain dacoities in their confessions and then deliberately except them in their depositions on oath, must at once excite suspicion. This the approver Lylab has done in two instances, on behalf of Etbaree, perhaps the most notorious bad character of all the prisoners, and the approver Dhurmo Doss in one instance, on behalf of Etbaree and Modun Mussulman. Had any great length of time elapsed between the dates of the confessions and those of the depositions, some allowance on the score of forgetfulness might be made, but when we find that Lylab's confession was begun on the 1st December, 1853, and carried on, on various dates, up to the 1st April, 1854, and Dhurmo Doss's begun on the 26th December, 1853, and carried on, in the same way, till the 20th January, 1854, and that both gave their depositions on oath before the sessions judge on the 19th April following, we can only conclude, that these approvers are men, on whose statements it would not be safe to rely. We are the more strongly impressed with the necessity of receiving and scrutinizing with the utmost care the evidence of approvers, in cases involving so fearful a penalty, from the fact, that while this case was under consideration, an application was submitted to us by the Government pleader in another case, with a view to withdraw the prosecution, on the ground that circumstances had transpired which proved beyond question that the evidence given by the approvers was false, and that therefore the commitment could not be sustained. In regard to the specific dacoity charged, the confessions and the depositions correspond, but it is remarkable, that although the prosecutor and his friends recognized some of the dacoits, not one of these is mentioned in the confessions; whereas though less important, it is also to be remarked, that not one of the many named in the confessions is said to have been recognized, though a person named Muddoo (Ferazzee) (in all probability the approver Lylab, who went by that designation) was recognized. The evidence in this case, if taken alone, being consistent with the original statements of the approvers, might be regarded as sufficient to convict, but we feel that the prisoners are entitled to the strong doubts we entertain of the good faith and truthfulness of the witnesses, on the grounds already shewn, with respect to the other case, which, coupled with the total absence of any one circumstance in corroboration, such as confessions, the finding of property, or recognition at the time of the occurrences, compel us to reject the evidence of the approvers, on which alone the charges against the prisoners are founded.

We would here further observe that some of the accused have been denounced as old offenders and well known bad characters,

but in the case of Nimchand, although there is on the record a *kyfeut* of the *mohafez* connecting his name with certain cases, in no one instance has guilt been brought home to him.

With reference to the preceding remarks, we acquit the prisoners and direct their release.

Before concluding, we deem it necessary to notice the want of completeness observable in the proceedings in sessions. When the approvers in their depositions omitted all mention of some of those dacoities, in which the prisoners were said to have been concerned, and which they had distinctly particularized in their confessions, we think the sessions judge should have questioned them on the subject. It is only by requiring approver witnesses to give statements in regard to all the instances of dacoity, charged against prisoners in their confessions, that a complete conclusion can be drawn as to their veracity. It would have been satisfactory also had they been asked to account for their voluntary testimony in favor of Etbaree and Modun Mussulman, both of whom they had originally denounced.

In examining the proceedings before the commissioner for the suppression of dacoity, we observe, that the approvers, instead of detailing the circumstances of each case, in which they declared the prisoners to have been concerned with them, after stating the particulars of the specific dacoity charged in the 1st count, merely referred the court to the statements made in their confessions. And it does not appear, that the prisoners were made acquainted with the different instances, in which they were thus implicated, when the order for commitment was passed. We think it but fair to all prisoners, that instead of being told generally that they are about to be tried for having belonged to a gang of dacoits, they should be apprised of the particular instances to be brought against them, so as to give them an opportunity of providing exculpatory evidence, quoad each of these instances; otherwise it is impossible for them to adopt measures with a view to rebut the evidence of the approvers efficiently.

The certificate signed by the deputy magistrate, Baboo Chunder Sekur Roy, sets forth, that the confession of Lylab was taken down on various dates beginning with the 1st and ending with the 15th December, 1853, but the record shews that further communications, in continuation of the confessions, were made on the 18th December and 1st April following. This mode of certifying is defective, and unsatisfactory; defective, inasmuch as the two last dates of examination are not covered by the certificate, and unsatisfactory, because a certificate signed, immediately after each day's examination, must be of more force and would prevent the possibility of any portion of a continuous confession becoming nugatory, by a casualty, or the sudden removal of the officer before whom it was made.

1854.

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Case of
NIMCHAND
and others.

PRESENT :

A. DICK, AND J. DUNBAR, Esqs., *Judges.*

GOVERNMENT AND BHOONDOOROO PULLY,

versus

NUFFER PULLY (No. 7,) SOOKOO KOCH (No. 8,) BAZAROO KOCH (No. 9,) SETUL KOCH (No. 10,) SHIBOO KOCH (No. 11,) HARY PULLY (No. 12,) NUBYE PULLY (No. 13,) GOLUCK RAJBUNGSY (No. 14,) PREM PULLY (No. 15,) NEMAYE PULLY (No. 16,) HABUL HARY (No. 17,) BHIKUND (No. 18,) KUNDLOO HARY (No. 19,) KRISHNA HARY (No. 20,) FAGO HARY (No. 21,) DURBAROO HARY (No. 22,) CHUNTOO HARY (No. 23,) CHAMAROO HARY (No. 24,) SAYBUCK HARY (No. 25,) AND RAMGOBIND (No. 26.)

Dinagepore.

1854.

June 19.

Case of
NUFFERPULLY and
others.

CRIME CHARGED.—Nos. 7 to 26, 1st count, dacoity ; Nos. 7 to 25, 2nd count, having possession of plundered property obtained by dacoity, knowing it to be such.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. G. U. Yule, officiating magistrate of Dinagepore.

Tried before Mr. James Grant, sessions judge of Dinagepore, on the 8th April, 1854.

Prisoners convicted of dacoity, sentenced to seven years' imprisonment. Appeal rejected.

Remarks by the sessions judge.—On the night of the 20th January, 1854, some twenty dacoits attacked the house of the prosecutor, who was bound, beaten and seized, with a lighted *mussal*. The dacoits carried off property valued at Rs. 484-8½ including 400 Rs. in cash. The property recovered was valued at Rs. 226-12 including Rs. 209 in cash. The prosecutor recognized the prisoner "Nubye Pully" (No. 13); and his servant Amira, witness No. 29, recognized two men, of whom one was released by the darogah, and the other "Hurry Churun," witness No. 4, by the acting magistrate. Two of the confessing prisoners, very young men, were admitted as witnesses and gave evidence against their acquaintances, the prisoners Nos. 17 to 26. All the prisoners confessed in the *mofussil*, and also in the *foujdary* with the exception of "Ramgobind" (No. 26,) who was the leader of the *Hary* portion of the dacoits. Before me the prisoners pleaded *not guilty*, but Habul Hary (No. 17,) allowed that he accompanied the dacoits for a short distance, and received six rupees from them on their return, and the prisoner Kundloo Hary (No. 19,) said that he was persuaded by a *burkundaz* to confess before the magistrate.

The greater part of the property produced by the prisoners was cash, but I see no ground for doubting the confessions or

the evidence of the witnesses though several of them were in all probability accomplices. Kuthoo, witness No. 5, had been to the prosecutor's house a few days before the dacoity, offering ornaments for sale. Pachoo, witness No. 3, was aware of the dacoity having been arranged by the prisoner Nuffer No. 7 and Hary Churun, witness No. 4, had been told about it by "Pachoo," witness No. 3. The evidence of the young men, Kathoo, witness No. 1, and Rubby Hary, witness No. 2, who confessed and were admitted as witnesses is clear against the men they were acquainted with, and without any trace of exaggeration or inclination to name persons respecting whom they could not speak positively.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for (7) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and J. Dunbar.) After perusal of the petition of appeal and examination of the record, the Court see no reason for interference with the sentences passed, on the petitioners, by the sessions judge.

1854.

June 19.

Case of
NUFFER
and
PULLY
and
others.

PRESENT :

A. DICK, Esq. SIR R. BARLOW, BART., H. T. RAIKES
AND B. J. COLVIN, Esqs., *Judges.*

CHOPANG GARROW ON THE PART OF GOVERNMENT,

versus

RANGRING (No. 1.) AND CHORAN DOBASSIA (No. 2.)

CRIME CHARGED.—Dacoity with murder.

Committing Officer.—Captain W. Agnew, magistrate of Gowalparah.

Tried before—Capt. J. Butler, officiating deputy commissioner of Assam, on the 24th April, 1854.

Remarks by the officiating deputy commissioner.—The case was tried before Capt. Agnew, magistrate of Gowalparah, with the assistance of a jury, and referred to this court in the manner prescribed in Clause 5, of Section 2, of the Rules for the administration of justice in Assam.

I annex the magistrate's report No. 5,* of the 9th January last, which accompanied the proceedings of his court in the first

Assam.

1854.

June 19.

Case of
RANGRING
and another.

Two prisoners, Garrows, were charged with dacoity attended with murder, being parties in an expedition for the sake of procuring heads in which they took eight lives. One prisoner was acquitted and the other sentenced capital-ly.

* From the magistrate of zillah Gowalparah to the deputy commissioner of Assam, No. 5, dated the 9th January, 1854.

* Chopang Garrow on the part of Government,

versus
Rangring Garrow, Chorán
Dobassia.

I have the honor to forward my proceedings in the case noted in the margin,* tried before a jury, agreeably to Section IV. of the Assam criminal procedure rules.

1854.

June 19.

Case of
RANGRING
and another.

instance, and Major Vetch's letter returning them for the purpose of having certain evidence indicated taken, with his letter No. 89, of 1st April, resubmitting the proceedings.

The prisoners are charged with dacoity attended with murder, the circumstances of which are thus related by the prosecutor, who says that in the month of Agrahun last year, about 4 o'clock in the afternoon, the prisoners and a person called Mizang, not apprehended, with twenty or twenty-five Bewalna, (independent) Garrows all armed, attacked his house with cries of *kat, kat, mar, mar*; on hearing which, he (prosecutor) and his younger brother, Maljang, fled into the jungle where they concealed themselves, about fifty paces from their house, from whence they saw Choran, the prisoner No. 2, kill their mother, Rangchi, their elder sister, Kalchi, falling by the hand of the other prisoner, and their father, Biring, by that of Mizang, five other members of the family being massacred by the remaining Garrows, namely, Manshi and Banshi, younger sisters, and three nieces, called Shunshi, Benshi and Rangshi, the whole of whose bodies were afterwards decapitated and the trophies carried off by the attacking party, as well as certain articles of property, amongst which are the necklace and cloth produced in court, found in the possession of the prisoner, Rangring. Plaintiff is unable to account for this attack on his family, as they were neither slaves nor at enmity with any person.

There are some discrepancies between this statement and that given by the prosecutor at the thannah, where when first examined, he mentioned only Choran and Mizang as having been recognized by him amongst the attacking party, he also stated that he did not know by whose hand each individual fell; whereas since the apprehension of Rangring he has implicated him also, and he now particularizes the murderers of three of the family. There is also a slight difference in the articles stated at the thanuah to have been plundered, and those subsequently mentioned.

Eye-witnesses Rasan, Maljung, Rasan states that his house is about Arklie. fifty paces from the prosecutor's, and that he saw the advance of the party exactly as stated above, on observing which, he fled with his wife into the jungle from whence he witnessed the scene of blood-shed. He recognizes the prisoners who were known to him before, and states that Choran killed the prosecutor's mother, Rangring, his sister, and Mizang, his father, and that he afterwards went to the prosecutor's house, and saw the decapitated bodies. He recognizes the necklace and cloth produced in court as the property of the prosecutor's mother. He stated in the foudjary that Mizang killed two persons, Biring and Banshi, and before the jury that he only killed the former. On being questioned as to this discrepancy, he says the former is the correct statement; he also stated in the foudjary that the party made their attack in silence, and before the jury that they advanced with cries of *mar, kat*. Before the darogah too he said he did not know who killed each separate individual, whereas in the foudjary and before the jury, he makes his statement tally with that of the prosecutor.

The next witness, Maljung, is the younger brother of the prosecutor, and his evidence in all respects agrees with that person's deposition. There is an immaterial discrepancy between his evidence in the foudjary and that given before the jury, in regard to the distance he was from the house when concealed in the jungle, and as to the number of the assailants; he also saw the headless trunks the following day. With reference to this witness, I would beg to remark that when the prosecutor was first interrogated by the police as to who were the eye-witnesses, he named only Rasan and Arklie.

The purport of the evidence is explicitly detailed in the following depositions.

1854.

Before jury. Deposition of Chopang Garrow, 19th November, 1853.—Deposes that last Agran, does not know the date,

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Case of
RANGRING
and another.

The witness Arklie is wife to Rasan. Her statement corroborates that of the prosecutor and other eye-witnesses.

This witness, is wife to the prisoner okjie Rangring, she says she heard of the murder of prosecutor's family from her husband, who returned home one day in company with the prisoner, Choran, and Mizang with three heads, and the cloth and necklace produced in court, which were afterwards taken away to Mizang's house, where the heads were left, and the property brought back. Witness says her husband got drunk and attempted to cut her down in Kartick last, which enraged her so, that she disclosed what she knew of the murder to her uncle, through whom the affair came to the knowledge of the Lukar, who caused the apprehension of the prisoner, and his delivery to the police darogah. Witness says she pointed out the cloth and necklace to the persons who apprehended her husband, as part of the property plundered, and also the weapon with which he was armed. Her deposition before the jury differs somewhat from that given in the foudjary; she there stated that her husband brought home four heads, here, that the number was three.

Choback, Dangring, Daharu, These witnesses depose to the apprehension of Rangring and his confession before the darogah.
Dakna.

The prisoners both plead not guilty. Rangring states that the property produced in court as part of that plundered was brought by him from a person called Mydhon, whom he cited, together with Ram Singh to prove this; Mydhon on being first questioned said, he never sold any cloth to the prisoner, but on its being shown to him acknowledged he had sold it about two years ago, for twelve annas; he said the cloth would be found six haths long by two broad, and that it was much torn in the middle and a little at the edges; he stated that he denied the sale at first because the people of his village had told him if he acknowledged, he would be made a defendant. His description of the cloth was found correct, except as regarded the length. The other witness knew nothing of the necklace or cloth, he was only aware of the prisoners having bought a cloth from Mydhon; but whether that produced was it or not, he could not say; he heard that it was a Garrow fabric that was sold, but the one produced he said was Bengalee manufacture.

The prisoner, Choran, stated that he went to collect revenue in Darung-giri by order of the *surbarakar* of the Garrow mehals, and heard there that certain persons he named had committed the murder, but that he himself was at home at the time of the occurrence; he cited Mema Sirdar, Jonggoth and Samon to prove this. The latter could not be found, and the other two witnesses stated they knew nothing about the affair, the prisoner had no questions to put to them. The Garrow *surbarakar* was examined by me as to the truth of the prisoner's statement, that he had been employed in collecting revenue by his order. This was denied by the *surbarakar*, who said the prisoner was not in Government employment, and besides he (the *surbarakar*) was at the time with me in the Garrow frontier, and no collections were being made just then from the Garrows.

The jury found both the prisoners guilty.

In the prosecutor's first deposition at the thannah no mention was made by him of Rangring, who was not accused till after he had been delivered up by his chief. This leads me seriously to doubt the prosecutor's evidence,

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Case of
RANGRING
and others.

one day in the afternoon the Garrows of Garrowdooleah, viz. Choran Dobassia, Rangring Garrow, and of Chipneegeeree, Meesam Garrow, with twenty or twenty-five others of the independent Garrows, whose names and persons he does not know, armed with spears, swords called Longharees, and shields, came from the east side with shouts of *mar, mar*, and surrounded my house; on seeing this, I and my brother Maljung ran into the jungle

as it affects this prisoner, whom he states was well known to him; it is difficult therefore to believe that he could have forgotten to mention his name in the first instance, had he been one of the assailants. On the other hand, the prisoner is stated to have confessed at the thannah that he accompanied the gang, although he took no part in their proceedings, and there is the evidence of his own wife, that he returned home with human heads in his possession, and that he told her of his having been concerned in the outrage. This evidence is, however, confessedly given from revengeful motives, and must accordingly be viewed with doubt, and I place little reliance on a thannah confession. The evidence of the eye-witnesses is certainly strong against the prisoner, but Rasan you will observe in his first examination before the police did not mention Rangring's name, and the other two witnesses, it must be remembered, were not examined till after his apprehension. From my experience of Garrow witnesses, I would not without strong corroboration rely on their evidence against a prisoner who had not in the first instance been mentioned. I think they generally give the true account of an occurrence at first, but they are afterwards easily led to exaggerate their statements. With regard to the property found in prisoners' possession, I think it clearly proved that the cloth at least was purchased by him from Mydihon. The reason given by that witness for denying the sale in the first instance is extremely probable, and as the man is almost blind, and the cloth was only shown to him bundled up in the hand, he could not possibly have seen the marks by which he recognized it. The length, it is true, is not found to agree with the witness's statement, but the marks are exactly those he mentioned. Under the above circumstances, I would beg to recommend the acquittal of Rangring.

I concur in the verdict given by the jury against Choran, whose guilt I think is fully established. He was named from the first by the prosecutor and Rasan, the only eye-witness examined at the time information of the crime was given at the thannah. It is to be regretted that no local investigation could then have been made by the police, but this was not practicable, owing to the alarm occasioned by the numerous outrages committed just then by the Garrows. There is however no doubt of the crime having been committed, and no motive appears on the face of the proceedings that could have led the prosecutor to bring a false accusation against Choran. There are many discrepancies in the evidence, enough perhaps under ordinary circumstances to shake faith in the prosecutor's and the witnesses' veracity altogether; some allowance however must be made where evidence has to be taken through indifferent interpreters, and the Garrows are so rude and ignorant a race that it is at times difficult to get an intelligible reply from them at all.

Having ignored the evidence as affecting one of the prisoners, I cannot, as I would otherwise have done, recommend a capital sentence being passed on the other (Choran) but would beg to suggest his being imprisoned for life in transportation with labor in irons.

From the deputy commissioner of Assam to the magistrate of zillah Gawalparah, No. 116, dated the 23rd February, 1854.

on the south side, distant about fifty yards, and there remained, and none of the others being able to escape, I was able to see from my hiding place, Choran Dobassia kill my mother Rangshi, while Rangring killed my sister Kallsee, and Mizang Garrow kill my father, Bering Garrow, other independent and unknown Garrows murdered my sisters Manshi and Banshi, my nieces Shemshi, Binshi and Rangshi in front of the door of the house,

1854.

June 19.

Case of
RANGRING
and another.

I have the honor to return the proceedings in the case noted in the margin,* and to request you will be so good as to re-assemble the court and take the deposition of the following persons, whose names appear in the police reports.

* Chopang Garrow on the part
of Government,

versus
Rangring Garrow and Choran
Dobassia.

Charged with dacoity and murder.

First. Billing Sirdar in the *surathal*, as he appears to have visited the spot some days after the murder, also in respect to the communications he had with the prosecutor and other of the eye-witnesses, in respect to who were the perpetrators of the murders.

It will also be important to know the ground on which Ramnatf. Chuckerbutty apprehended the prisoner, Choran, and to have the evidence, if any, in support of the same.

The evidence of Jattee Dobasseah who was employed in apprehending the prisoner Rangring seems important, as it can be given in respect to this and the mofussil confessions, without the medium of an interpreter.

It will also be desirable that you distinguish between the evidence given and recorded in your court without, from that obtained through, the evidence of an interpreter.

The places from which the several eye-witnesses saw the transactions should be ascertained, by questioning them, in order to make the plan better understood.

The prisoners should be asked if they have any further questions to put to the witnesses, who may be examined, or any further defence to offer, after which the jury should be again called on for a verdict, and your own opinion be given, and the proceedings be returned to this court.

From the magistrate of zillah Gawalparah to the deputy commissioner of Assam, No. 89, dated the 1st April, 1854.

I have the honor to re-submit the proceedings noted in the margin,† having taken the evidence indicated in the letter of your office No. 116, dated the 23rd of February 1854.

† Chopang Garrow on the part
of Government,

versus
Rangring Garrow and Choran
Dobassia.

2nd. The jury adhere to their former verdict, and nothing has transpired to cause me to change the opinion I previously expressed, for although Jattee Dobasseah confirms the evidence given as to Rangring's confession at the thannah, still he has maintained his innocence before me throughout. I do not think it would be safe to convict, except on peculiarly strong evidence, a person not mentioned in the first instance by the prosecutor and witnesses in these Garrow cases. With regard to the prisoner, Choran, I would still recommend the sentence I before suggested being passed on him, for the reasons there alleged. The heinous nature of his crime, it is true fully deserves the punishment of death, but it does not seem in accordance with our ideas of justice to pass an irrevocable sentence on one prisoner on the testimony of witnesses, whose evidence has been rejected, as it affects another criminal in the same case.

1854.

and cut them up in several places with their swords, and cut off their heads.

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and another.

They also plundered Garrow Beads one string

Clothes,	7 pieces.
Daws,	3 "
Baskets,	6 "
Spear,	1 "

which they carried off together with heads of the murdered persons, and went away in the eastern direction. Near the place there resided my sister Sodye Baggu, her *townil*, i. e. husband, Toosang Garrow, who when they saw the attack made, ran off into the jungle a great way, and did not see the murders committed, but they afterwards saw the corpses, but Rasan Garrow who lives near, and his wife Abookie who escaped into the jungles were within fifty yards of the deeds done, besides these there was no one near, and therefore I have no other witnesses, and it was in the manner described that we saved our lives, so I gave my evidence last year, and I cannot tell how the prisoners were apprehended or the articles discovered, but I did not before know by what means the beads, a string and the same cloth were recovered, they were in duress at the thannah when I was sent for, and recognized them and the property; since then I have heard that Rangring was taken with the property by Chuback and Dabbarroo Daknah, that Ramnath Chuckerbutty had secured Chorah.

There was no cause and I cannot account for the murders; we were neither enemies nor slaves. The dogs and jackals have eaten up the bodies, and I have removed to the house of the Mundul of Garrow Doobah.

I recognized the prisoners because we were formerly neighbours, but last when examined at the thannah, I did not know Rangring's name, therefore I did not mention him, but now I see him I recollect his name, and knowing it I now denounce him. Last year I did not say I did not see the murder committed before my eyes, why it was written so at the thannah, I cannot tell.

21st March, 1854.—The murder was committed inside of the house, I escaped from the house on the south side, and on the west side in the jungle at one hundred paces distant, I concealed myself, and through the holes or window in the thin bamboo wall I saw the whole, and I therefore before stated how and by whom the murder was committed.

Rasan's house is on the west side of the house where the murder was committed, at one hundred and twenty-five paces distance, and on the south side of Rasan's house, at fifty paces distance from the house in which the murder was committed on the west side, I saw the whole affair from the jungle.

Rangring's reply.

I never killed any one, and I know nothing of the affair.

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Choran's reply.

I never killed or plundered in this case.

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Rasan No. 1, witness for the prosecution.—Deposes that his house is fifty paces from the prosecutor's, and that last year one day in Agran, in the afternoon the prisoners Rangring and Choran, and Mizang Garrow and about twenty-five others with swords and spears and shields advanced from the east calling out *kat, kat, mar, mar*; on this prosecutor and his brother ran off, but no one else was able to get away; seeing this from fifty yards I fled with my wife Abookie into the jungle, and there remained and from thence saw Choran kill Musst. Rangshi, and Rangring kill Musst. Kallsee, and Mizang kill Bering Garrow, while Binshi and Bingshi and three little ones were cut several times by the other assailants, and they afterwards cut off their heads and carried them off along with some clothes, three *daos*, six baskets, one spear and a string of beads, and departed by the east. I was once a neighbour of the three persons named I was therefore able to recognize them; since that time through fear I have removed to Gullmarra, and once after the murder I went to the place and saw the eight dead headless bodies.

There was no ill-will, neither were the deceased their slaves, so cannot tell the reason for killing them.

I cannot tell how the articles produced were discovered, but at the thannah I heard from Abookie that they were found with Rangring, the articles are those plundered and I have seen them on the deceased, mother of prosecutor. No one else was near the spot but ourselves, my previously seeing the offenders coming enabled me to escape, they came afterwards to my house but took nothing away, but they cut a bullock and my door.

You formerly said in the foudary that you saw Banshi killed by Mizang, why do you now retract and say you only saw Bering killed by Mizang?

I did say that he killed Bering, which he did first and I forgot Banshi whom he also killed in my sight, he killed both.

You first in your deposition in the foudary said that the prisoners approached by stealth, you now say that they advanced with shouts, which is the true account?

What I now state is correct, what I said in the foudary is incorrect.

21st March, 1854, Rasan.—Concealed at a distance of fifty paces in the jungle, I saw the prisoners commit the murder. The murderers committed the murder inside of the house, I saw the deed committed from the west side of the house, and saw clearly by whom the murder was committed. The bamboo wall of the house is very thin or full of holes or windows and from without persons inside can be seen.

Malzing No. 2, witness for the prosecution.—Deposes that

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on the afternoon one day in Agran last year, Choran and Rangring of Garrowdoobah and the absent Mizang Garrow and about twenty-five Hill Garrows, armed, attacked our house when prosecutor and I fled and hid ourselves in the jungle at a distance of fifty yards, but the rest of the family being unable to escape were killed. Biring by Mizang, Runshi by Choran, Kallsee by Rangring, and the others killed Munshi, Bunshi, Bingshi, Shemshi and Ringshi by cuts of their swords; they afterwards cut off their heads and with these three *daos*, six baskets, a spear, seven clothes, a string of Garrow beads which they took as plunder, they went away by the east; all this I saw from the jungle: they came from the east with shouts of *mar, mar, kat, kat*, but they not seeing me, my life was saved; that day I remained concealed in the jungle, and the next day I went to the house where I saw the eight headless corpses lying and the property removed, after this I went to the Mundull's where I remained, the dogs and jackals ate up the bodies. This year I was sent for to the thannah of Kurribarree and there I saw the *sarree* and beads, which I recognized as the property of my mother, this was part of the *loot*; cannot tell by what means it was recovered, but I heard there from Dangring that they had been found with Rangring; I cannot say why the prisoners committed the murder, there was no previous ill-will.

I was able to recognize Choran, Rangring and Mizang because we were formerly neighbours, of these Choran and Rangring now present were two.

Before, you said to the magistrate that you were hundred paces off and that there were forty persons, how is it you now say fifty paces and twenty-five persons?

I said at guess these, for they may have been less or more.

Malzing, 21st March, 1854.—I stood in the jungle at fifty paces distant from the house in which the murder was committed, and the bamboo walls being very thin and full of holes or windows persons can be seen inside of the house, and I saw who committed the murder inside of the house; I before stated that I stood on the west side of the house in the jungle and not the south side.

Mussumut Abookie Garrow, No. 3, witness for the prosecution.—To the same as to time, that about forty Garrows came with shouts of *mar, mar, kat, kat*, when Rangring with his Longhari killed Kallsee, Choran her mother Rungshi, and Mizang her father Bering, this seeing I fled into the jungle, and after this I cannot tell what was done or taken; two days after heard from complainant that Malshi, Banshi, Singshi, Bungshi, had been killed in the same way, and their heads cut off and taken away, also three *daos*, seven clothes, six baskets, a spear and a string of beads; can give no reason for the attack, no ill-will, nor were they slaves of the offenders.

I was able to recognize the three prisoners because they were formerly neighbours, of which two are in the court, I was a hundred paces distant when I recognized them.

The articles produced are the prosecutor's, they belonged to his mother and I have seen them with her.

Abookie, 21st March, 1854.—The prisoners killed Bering and others inside of the house, my house is about 150 paces distant west of the house in which the murder was committed, and from which I saw the deed, but cannot specify the exact distance. Rasan is my husband and we live in one house, my house is situated in Garree having a door on the east and west, and being in the house I heard the shouts of the prisoners and fled from the west side and saw them.

Okize, No. 4, witness for the prosecution, aged twenty-five, wife of the prisoner Rangring.—Last year, does not know the date, the day on which she heard from Rangring that a number of persons of the prosecutor's family had been put to death; that evening, he, Rangring, and Chorán and Mizang brought three human heads together with the *sarree* and *munee mallah*, and in reply to my questions, my husband told me that the matter was not one to be repeated, that without any crime Bering and many others had been put to death by himself and many other Garrows, and that he had brought the head of the said Bering and those of two others with the two articles, and that the rest of the heads had been taken away by other Garrows and that they all passed the night in the house of Chorán, and sent out for eight annas worth of liquor; the following morning the three heads and the two articles of property to Mezan villager, and after an absence of two days my husband returned bringing the two articles in question with him, and on the admonition of my husband I held my peace.

This year one day in Kartick my husband got drunk and without cause he gave me a thrust with a spear, and by an accident missed killing me, but I was annoyed at his conduct, and went and told all to Dangring Garrow, he told it to Dangrim Sirdar who told it to Icha Luskur, and on this information under the orders of the Luskur, Sooback, Dabaroo and Dangring came to my house and seized Rangring, and I produced the property as part of the plunder, I also produced a spear saying it was used in perpetrating the murder.

There was no cause for the murder or ill-will. I have no particular mark by which I can recognize the articles, beyond that I know them from their having been long in my hands. I did not say four heads but three when examined by the magistrate, nor did I say that they left my house in the morning, it was the evening, the interpreter may have made the matter less or more.

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You mentioned to the magistrate eight persons as having been killed.

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I heard so from my husband, who killed particular persons, I did not say only that Bering and the other two (three in all) had been speared or killed by the sword.

You said before the magistrate that a division of property took place, why have you withheld this now?

I did say so; my husband told me so, that the Garrows had had their share, but who and what, I do not know, neither did I ask.

Chuback, No. 5, witness for the prosecution, aged thirty.—All I know is that last Kartick, the two prisoners and the absent Mizang were denounced by Dingrang Sirdar, on the information of Dangring, of having been engaged in the murder of Bering and others, in all eight persons, who gave the information to Icha Luskur, who gave orders to me, Dingring Sirdar and Dabaroo to go to Rangring's village and apprehend him; when there his wife, now in court, produced the *saree* and *munee mallah* saying that they were plundered, and also produced a spear, which she said had been used on the occasion. Rangring and these things were handed over to the Kurribarree darogah, and Rangring on being examined by the darogah, he, of his free will, confessed and said that it was by the advice of Choran and Mizang that the murders were committed, this I heard with my own ears, after this Choran was apprehended through the instrumentality of Ramnath Chuckerbutty, who made him over to the darogah, when he, Choran, denied and charged Rangring and Mizang with the murders.

The spear produced in court was found in the hand of Choran by Ramnath Chuckerbutty, and made over to the darogah.

Dangring aged forty, No. 6, witness for the prosecution.—Dangring deposes that in Kartick, he heard from his niece Okeiza that her husband Rangring, Choran and Mizang had killed Bering and the others, and got the plunder; this I communicated to Bingring, he told it to Icha Luskur, and the Luskur sent me, his brother Chuback and Dangring Sirdar, Dabaroo to Rangring's house where we apprehended him, when Rangring's wife Okeiza produced the *saree* and *munee mallah* as plunder, and a spear as an instrument of the murders which, with the prisoners, we took to the darogah, when he voluntarily confessed he had taken part at the instigation of Choran and Mizang, Choran having been apprehended last he denied and charged Rangring and Mizang with the murders.

Dabaroo aged thirty-five, No. 7, witness for the prosecution.—Deposes to the apprehension of Rangring as above as also the articles, and making them all over to the darogah, when he voluntarily confessed to having engaged in the murders at the instigation of Choran and Mizang.

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Dokush, No. 8, witness.—Deposes to the voluntary confession at the thannah by Rangring, that he had engaged in the murders of Bering and others at the instigation of Mizang and Choran and had taken away their heads and their property.

Beling No. 9, witness for the prosecution.—Last year, does not recollect the date, one day in Agran, I was present when the complainant reported to the darogah at Kurribarree thannah the murder of his father, mother, sisters and nieces by Choran, Rangring and Mizang, and the carrying off of their heads, but I had no previous knowledge of the deed, and heard nothing of it from the complainant. Being a Sirdar of the Dooar the darogah generally sent for me, and in this manner I became acquainted with the circumstances, but I did not make any separate enquiry from the darogah regarding the eight bodies. I did not say in the thannah that I had seen them, I merely heard from the complainant that Choran and about forty independent Garrows had committed the murder; the next day I went with Rasan to search for his wife who had fled to the jungles, and we, on arriving at Naroboree jungle in the complainant's house, saw eight headless bodies, I could not recognize the bodies, Rasan pointed out Bering's corpse, the remainder of the bodies bore the marks of sword wounds in the hands, feet and body. Rasan did not tell me by whom they were murdered. From fear I said I had not seen the bodies, but the truth is I did see them, the complainant did not at first mention the name of Bering or Rangring's wife giving information of her husband's guilt,—Dangring and Dingring Garrows apprehended Rangring and then I heard the prosecutor name him.

The day after the murder, Rasan told me that he saw Choran and Mizang with forty Garrows come and murder prosecutor's mother, father and others, and afterwards taking me with him, we could not recognize the bodies, neither did Rasan then say who each of the prisoners killed, and no other person told me who committed the murder and Rasan did not then mention Rangring's name.

Ramanath Chuckerbutty.—When the prosecutor first reported at the thannah he mentioned Choran's name, and a little time after the murder, I heard the name of Choran Dobassia mentioned by Beling Sirdar. Choran Dobassia was formerly employed as a *surbarakar*, and therefore I know him. On 27th Assin or 12th October, early in the morning, on the east of Singinarræ thannah below the hill, I went to perform the needs of nature, when I saw Choran going along the foot of the hill and on suspicion I called to him and on his coming I apprehended him, but I do not know where he was going below the hill, on my calling he stopt and came to me and I apprehended him in the thannah, and no one else was present at the time. I cannot say that Choran came of his own accord; on calling him he came

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and said he came to present himself. I am not aware that Choran was before suffering from sickness but his body was emaciated.

Jattee Dobasseah.—From Dingrang Sirdar, of Icha Luskur, of Dooar Tigree I heard that Rangring committed the murder, and to go and seize him, some resistance might be offered. I gave the information to the darogah, at Kurribarree when to seize him. Runjeet Singh police mohurir, Dhela and Assaroo burkundaz went with me to apprehend Rangring; on going to the Sirdar he left us at Showaliaga hill, and he with Dabaroo, Dukara and Chubuck went to Rangring's house and apprehended Rangring and made him over to us and we brought him to the thannah. The prisoner's wife Okiza, on appearing at the thannah with the prisoner, in her depositions said, that her husband had brought home a red *sarree*, cloth and a string of *munee mallah* (beads.)

The darogah then sent Chubuck and Dangring to her house, and afterwards brought these two articles of property, and I heard from Okiza's mouth that Rangring, Choran and Mizang with the aid of others had killed Chopang's father, Bering, and mother and others, do not know the names, altogether eight persons, and had brought the said property to her house, but she did not mention the names of those who assisted in committing the murder. Before Rangring was apprehended I did not know Okiza, and I heard nothing from her. After the prisoner was apprehended his wife Okiza said, when she lived at Garroodoba, Bering and others being killed, four or five heads being brought in, she fled and she mentioned the matter in the thannah, this I heard, Rangring on being apprehended voluntarily confessed in the thannah that he, Mizang and Choran had murdered Bering and others.

No. 1, prisoner Rangring's defence.—He pleads that the articles produced are his own property, and that he purchased them from Mydon Garrow, my witnesses are Choran prisoner and Mydon Garrow, and Ransing Garrow.

No. 2, prisoner Choran's defence.—Denies the charge and was at home at the time of the murders. It was No. 1, Rooman Garrow, No. 2, Deesan, No. 3, Jauridine, No. 4, Bago of the Durrung Girree village, Mizang, Jungda, Jungseen, Toonum of Teepra Girree who killed Bering and the others, and it was while employed in collecting revenue there that I heard of it from them.

My witnesses are Meema Sirdar, Junggat and Somon Garrow.

Witnesses for Choran, Goluknath Sein, surbarakar, aged sixty-one.—Denies that Choran is an interpreter on the part of Government, he is interpreter to Hansing of Harree village, he was present with Choran in the Falgoon before last, but since then I have not seen him nor did I employ him to collect revenue.

Meema, aged forty, Junggat, aged fifty.—Knows nothing in Chorán's defence or by whom the murders were committed.

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Witnesses for Rangring, Medonee, aged forty.—Knows nothing and never sold him any cloth.

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The cloth produced is mine. Two years ago I sold it to Rangring for twelve annas, and four annas is still due me by him. It has marks by which I recognize it, it is six cubits long, two broad, it is cut in several places in the middle and on the sides.

My people told me, that if I admitted it, I should be made a defendant, and I was afraid to make the admission, but it is quite true that I did sell the cloth to the prisoner.

Ransing, aged forty-five.—Knows nothing in defence; I do not know to whom the *munee mallah* belongs, nor do I know anything about the cloth, but I have heard that about a year ago he purchased a piece of cloth at my village, but whether that in court be it or not, I cannot tell; I heard it was a piece of red Garrow cloth, whereas that produced is Bengalee.

Gungaram, interpreter.—Deposes that depositions have been truly translated.

Verdict of jury.

We are of opinion that the charges are proven by the evidence and by the confession in the mofussil, and we are of opinion that they are guilty of dacoity with wilful murder.

If, before the magistrate and jury, they have pleaded not guilty, they have been able to produce no evidence in their defence, only Madonee witness recognizes the piece of cloth a red *sarree* as his, and sold it to Rangring two years ago, nor does its length and breadth and marks described agree with the cloth produced, besides the witness is nearly blind and can scarcely see, we therefore reject this witness as unworthy of belief.

Opinion of the officiating deputy commissioner.—The magistrate states, "I concur in the verdict given by the jury against Chorán whose guilt I think is fully established," but he recommends the acquittal of Rangring. In the present trial no cause is assigned for the perpetration of dacoity and murder.

By the evidence of Rasan No. 1, witness, Malzing No. 2, and Mussumut Abookie No. 3, it is clearly established, that Rangring No. 1, prisoner, and Chorán Dobassia No. 2, prisoner, were both present and recognized at the dacoity and murder of eight persons but concealed in the jungle, at the distance of fifty yards. I do not think it is possible that the witnesses could have seen the murders committed by each of the prisoners, in the prosecutor's house, through a thin bamboo wall. The prisoners deny the charge before the jury. The property, or red *sarree* cloth and a *munee mallah*, Garrow necklace, found in the house of Rangring No. 1, prisoner, is recognized to be the property of the prosecutor. I see no cause to doubt that the confession of

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guilt of No. 1, prisoner Rangring, was voluntarily made before the darogah at the thannah. The evidence adduced in their defence does not exonerate them, and finding the prisoners both guilty of dacoity and being accessories in the wilful murder of eight persons, having been present and recognized when the murder was perpetrated, I recommend that they be both sentenced to imprisonment for life in banishment with hard labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick, Sir R. Barlow, and Messrs. H. T. Raikes, and B. J. Colvin.)

Mr. A. Dick.—The evidence against the prisoner Rangring No. 2, I do not think sufficiently credible to warrant a conviction. The best portion of the evidence is his confession at the thannah and the testimony of his wife, both however have been proved false, or to say the least very suspicious, by the remarkable identity of the cloth, with one purchased by the prisoner from the witness Mydon, as noted by the magistrate Captain Agnew. In the confession, prisoner is stated to have admitted that it was part of the plunder, and the same in the wife's testimony. The prosecutor's evidence against prisoner, I consider utterly worthless. He says he knew the person of Rangring, but could not remember his name, when he first deposed at the thannah; but he distinctly recognized him killing his, (prosecutor's) sister. Were this true, he would most certainly have said he knew the person who killed his sister but could not name him. The deposition of the witness Jatee is in so many points so different from the report of the darogah, as to how the wife of Rangring was brought to witness against her husband and why Rangring was first apprehended, that the matter is involved in obscurity; Rangring, when first apprehended, denied entirely. I would therefore acquit him and order his release. It is to be regretted he was not asked how he accounted for his wife testifying against him. The evidence against the prisoner Choran is complete and I would convict him and sentence him as recommended. A sentence of transportation for life, by which a comrade is removed to undergo unknown sufferings, must be more terrible than one of death to men who have so little regard for life.

Mr. B. J. Colvin.—I think there is sufficient evidence to prove the charge against both prisoners. Although Rangring's name was not mentioned at first, the reason is that his name was not known at the time by, although his person was familiar to the prosecutor. The prosecutor said that there were many others engaged in the attack, whose names he could not state, and his having confined his mention of names to one or two, shows that he was not inconsiderately naming parties. His testimony is therefore entitled to greater credence, when after seeing Rangring he deposed to his being one of the party. Against this

man there is also his wife's evidence. It is not strictly admissible in itself, but it led to the finding of the necklace and cloth; and the former, however, the ownership of the cloth is disputed, has never been challenged as not being part of the stolen property. I would convict Rangring therefore as well as Choran of dacoity with murder. Even supposing it not to be established what part each took in the murders, they were present aiding and abetting in the perpetration of them, and I think that in so atrocious and cold-blooded a case as the present, where eight persons were barbarously murdered, nothing short of capital punishment will satisfy justice. I would therefore sentence both prisoners to death.

Sir R. Barlow.—I do not concur with Mr. Colvin in the conviction of the prisoner No. 1, Rangring, for the following reasons.

Neither the prosecutor nor his eye-witness, (for he had *but one then*.) named Rasan, when examined by the acting darogah Kumlakant Sein, ten days after the murders were committed, named the prisoner, No. 1, though they both named prisoner, No. 2, Choran. The prosecutor further said that he recognized Choran and Mozang (not apprehended) *only*; the others, some forty or fifty men were Garrows of another tribe, whom he could neither name nor recognize.

Some ten months afterwards, one Zatic, a dismissed interpreter, gave information to another darogah Gholam Asgur, saying he had heard that Rangring was one of the party, and that his wife, Okiza, had a cloth and a *mallah*, part of the plundered property. Such was the ground for the prisoner's apprehension many months after the murder. Maljung, a witness, not named by the prosecutor, his brother, at the time of the first enquiry by the police, also implicated him. How it happened that the prisoner, said to have been seen in the act of killing prosecutor's sister, was not named by him or his eye-witnesses, till October 1853, the murder of the whole family, eight persons, having been committed in November 1852, is not explained. Nor is it shewn why Maljung, *now* said to have been an eye-witness, was not named at first by prosecutor, who then stated before the police that Rasan and his wife, Abookie, were his only witnesses *no one else being present*. In concurrence with the magistrate, (who would acquit the prisoner,) I place no reliance, for the above reasons, in the prosecutor's varying statements as to the prisoner: his recognition by the witness, Rasan, (who had not in his first examination named him) after his apprehension, is equally unsatisfactory.

I must here remark that the prosecutor Rasan, before Kumlakant Sein, gave no details as to the individuals by whose hands the several murdered people fell, nor when cross-examined before Gholam Asgur on the second occasion on this point, were

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they able to give any particulars ; their answers were, that being frightened for their lives they fled into the jungles and could not therefore point out the actual murderers of each of the slain ; indeed they did *not* say that they *saw* the murders committed ; the prosecutor having, as he distinctly stated *previously* run into the jungle, and Rasan saying he also had hidden in the jungle, whence they both saw the prisoners, not in the act of murder, but carrying off the heads eastward. Maljung and Abookie, first examined before Gholam Asgur in 1853, gave similar statements, but did *not* see the heads carried off. Before the magistrate, however, all these witnesses, after the lapse of a twelvemonth, gave in the most detailed manner, the particulars of each murder ; how Chorán murdered Rangshi, Rangring killed Kallshi and Mizang, Bering, Malzung adding that he did see the heads carried off.

It appears from the record that Rangring was apprehended at the thannah, in the mode already stated, on the 15th October, and on the same day Chorán arrived there with a letter from Ramanath Chuckerbutty, a *surbarakar's* mohurrir, who happened to see him and seized him ; the prosecutor and his eye-witnesses were not examined by the police, till the 24th and 25th of the month, up to which date, the prisoners were in the hands of the police at the thannah. All these facts give rise to great doubts of the integrity of Rangring's mofussil confession and the whole of the mofussil proceedings before Gholam Asgur, which there is strong reason to suspect have been got up for the occasion.

The case against the prisoner, Chorán, No. 2, rests mainly on the evidence of the prosecutor and his eye-witnesses.* The case is one of life or death ; no middle course can be pursued. The prisoner is either guilty of being present and actively engaged in a most cruel murder of three children, amongst others who suffered, and being guilty has subjected himself to capital punishment (for none other would satisfy the demands of justice) or he is not guilty and must be acquitted.

The magistrate would convict and proposes to sentence him to transportation for life. The reasons, he assigns for this award, are rather grounds for acquittal, than for conviction, and for mitigated punishment.

But what is the proof against the prisoner Chorán ?

There is the deposition of the prosecutor before the magistrate supporting his statement before the police, in which the prisoner is named, and also that of the eye-witness, Rasan. Their evidence against the prisoner Rangring, I have, with the magistrate, already held to be contradictory and altogether unworthy of trust, yet these men swore as positively to his presence and to his having taken an active part in the slaughter of the family, as they have sworn to the complicity of Chorán himself. This

* Rasan.
Maljung.
Musst. Abookie.

is not a case where there is any room for any mistake as to the identity of the prisoners. They are all sworn to have been prosecutor's neighbours and *therefore* known to him and to his witnesses.

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- Could the prosecutor have mistaken the person of the individual whom he saw in the very act of cutting down his sister, whilst others were, as he now deposes in detail, cutting down his father, his mother and other relatives? Could Rasan be mistaken in his identification of the prisoners on the spot? Their being neighbours was the very ground of his recognition of them, yet he too has subsequently sworn to the presence of Rangring. If the evidence of these, the two most important witnesses, cannot be relied on, being so inconsistent and unsatisfactory, what other proof is there on the record which would justify conviction, involving a sentence of death upon this prisoner? I think there is none.

The prosecutor and his eye-witness were not called upon to give in their statement immediately on the occurrence of the murders. It was not till ten or more days had lapsed that the prosecutor and Rasan appeared before the police and most deliberately gave their account of what had occurred, and Rasan did not, even on his second examination before the police, say that Malzung was present on the occasion and had witnessed the murder, nor in fact did he mention him at all as having seen what had taken place.

As to the evidence of Malzung himself, I do not think it deserves any weight. It was not till the prisoners were apprehended and lodged in the thannah, twelve months after the charge, that his statement was taken. The statement of Musst. Abookie was made at the same time and, for similar reasons, should I think be rejected. The discrepancies in their evidence before the magistrate, as compared with what they said before the police, have been above noticed.

Having carefully considered the circumstances of this case and weighed the evidence for the prosecution, I am of opinion that there is no sufficient proof for conviction of either of the prisoners.

I have already observed that no medium course can be pursued; the evidence must be conclusive against the prisoners or at least afford violent presumption against them; in my opinion their guilt is by no means satisfactorily established. I am bound to give them the benefit of any doubts, and I would acquit them both.

Mr. H. T. Raikes.—This case has been referred to a fourth judge under the following circumstances.

The prisoners, Rangring and Choran, were tried by Messrs. Dick and Colvin in the first instance, and both judges concurred in convicting Choran of dacoity with murder, but differed as to

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the proper sentence to be passed on him,—Mr. Dick deeming imprisonment for life the most appropriate mode of punishment, while Mr. Colvin considered the ends of justice could alone be met by a capital sentence. These judges also differed as to the guilt of Rangring, Mr. Dick being for the acquittal and Mr. Colvin for the conviction of the prisoner.

The case then went before Sir R. Barlow, who thinks both the prisoners should be acquitted.

The effect of this verdict is, that Rangring is acquitted by a majority (Mr. Dick, and Sir R. Barlow,) in his favor, and I have now to consider the evidence as regards Choran only, and if guilty, the sentence to be passed on him.

There can be no doubt these murders were committed, the evidence of the prosecutor and of Rasan as to this is supported by the accounts of those who visited the spot afterwards, where the headless trunks were seen, and, at a later period, the remains of the bodies as the dogs and jackals had left them. There is as little doubt that the murders were perpetrated, as alleged, by a band of Garrows who carried off the heads of the murdered persons. The more material point to be considered is, whether the prisoner Choran is implicated in the crime.

The first intimation was given to the police by the prosecutor about ten days after the occurrence, who stated that a body of Garrows had suddenly attacked his house, and, with the exception of his brother, had massacred the whole family, consisting of eight persons, and carried off their heads; that he had fled into the jungle and could only speak to the *recognition of the prisoner Choran* and another named Malzung, (not apprehended) both of whom had formerly been his neighbours, the others were Garrows of another tribe, with whose persons he was unacquainted; he added that the only witness he had of the fact was his neighbour, Rasan, who with his wife had escaped into the jungle on the approach of the Garrows. Rasan was examined and corroborated the prosecutor's statement generally, and particularly as to *the identity of the prisoner Choran*, and the other named by the prosecutor. The enquiry thus instituted had no effective result, save to substantiate the fact of the murders, as the accused eluded apprehension; but, after the lapse of nearly a twelve-month, the case was revived, under the circumstances detailed in the deputy commissioner's letter to the court.

The prosecutor and Rasan have given on the trial many particulars of the murders, entirely omitted from their previous statements; they declare they saw the prisoner Choran actually murder Rungsee, that they recognized him, Malzung and likewise a third (Rangring) and name the members of the family, who fell under their blows respectively. Two other witnesses also came forward at the trial and deposed to having seen the

murders committed, and support, on all points, the evidence of the others.

1854.

The evidence of these two persons, one the brother of the prosecutor, and the other, the wife of Rasan, should I think be excluded from consideration, as far as it touches the identity of the prisoner; their late appearance as witnesses, and the first statement of the prosecutor, after a sufficient interval had elapsed, that Rasan only, as well as himself, had recognized any of the assailants, raises so strong a presumption that these witnesses never saw what they describe, that I agree with Sir R. Barlow, in distrusting their evidence altogether.

June 19.
Case of
RANGRING
and another.

There remains, however, the testimony of the prosecutor and Rasan, and though I am fully sensible that no dependance can be placed on the details afforded by it of the atrocities perpetrated by the individuals named by them, I think their evidence has been consistent and satisfactory throughout on the point of the prisoner Chorán's identity, and that it may suffice for his conviction as personally aiding and abetting in these murders.

Sir R. Barlow apparently rejects the evidence of these persons in toto, because being utterly unworthy of credit regarding Rangring, whose name they never mentioned till after his apprehension, it cannot be relied upon as to Chorán's identity notwithstanding their having maintained that fact from the first. In fact Sir R. Barlow thinks that as these persons have attempted to prove too much, and are fairly open to the imputation of falsehood on many material points that their evidence can in *no respect* be relied upon.

The first account given by these men in November, 1852, is natural enough, and quite worthy of confidence. They said, they both escaped into the jungle on the first alarm, but were aware of the butchery of the family, and saw the murderers decamp with the heads of the slain. †

To believe this, it is only necessary to understand that the jungle is close to the huts, that they only went so far as to conceal themselves from view, and it is then within the bounds of easy probability, that the deponents should have known what was going on within the huts, and have been well able to recognize any one of the gang previously known to them. This was the case as to the prisoner Chorán, who had been once their neighbour, and it is no where supposed that the prosecutor and Rasan had any object of their own in accusing this man so immediately afterwards. The graphic details subsequently added by these men may be very justly distrusted, but should not, in my opinion, be made grounds for rejecting such important part of their evidence as can stand the test of comparison with their previous examinations, and to such extent it should be allowed to bias the Court in its favor.

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Case of
RANGRING
and another.

Having before us these previous statements, it seems to me they are calculated rather to add to, than diminish the confidence of the Court in such parts of the more recent ones as are found to be corroborated by them, and that it would be wrong to reject the whole, because other portions are not so supported, as long as belief in what does stand the test is not inconsistent with mistrust of the remainder. The deponents, for instance, may be perfectly trustworthy on the fact of having recognized Choran among the murderers, yet at the same time it may be quite impossible that they saw the murders committed through the holes and interstices of the bamboo walls. Taking the first fact to have been proved, as one deposed to throughout a belief in the veracity of these men, so far is not inconsistent with a distrust of the rest of their story, which it is plain to see, has been added to gain greater credit for their former accusation.

I therefore think the evidence of the prosecutor and Rasan is entitled to every credit as to the identity of the prisoner Choran, and that his defence is only calculated to strengthen the impression of his guilt. He denies having been concerned in the murderous expedition of the Garrows, but admits it did take place, and accuses others of having been engaged in it. There is nothing in this to rebut the evidence against him. I therefore concur with Messrs. A. Dick and Colvin in convicting him of the crime charged, and as I consider no distinction can be drawn in favor of any one proved to have participated in such atrocious murders, it is not necessary to ascertain the exact part taken by the prisoner with a view to mitigation of punishment, I would concur with Mr. Colvin in passing a capital sentence on the criminal.

PRESENT :

A. DICK, AND J. DUNBAR, Esqs., *Judges.*

GOVERNMENT AND KISHEN MOHUN SHEEL,

versus

HUROCHUNDER SHEEL.

Backergunge.

1854.

June 20.

Case of
HUROCHUN-
DER SHEEL.

CRIME CHARGED.—Wilful murder of Mohimachunder Sheel. Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 2nd June, 1854.

Remarks by the sessions judge.—The murder of which the prisoner is charged happened in September 1852, since which time he has been in confinement as a madman in the insane hospital at Dacca.

The prisoner was convicted of the murder of a boy, but acquitted on the ground of insanity.

There was no eye-witness to the actual murder, but from the evidence of the prosecutor and

* No. 5, Joogul Sheel.
„ 6, Ram Needhee Singh.

two witnesses,* who came up almost as soon as it happened, it

appears that the prisoner, who had been left tied up in the house, as he always had been since he became deranged, managed with his teeth to unloose the cords, which he no sooner did than he seized a *dao* lying in the house, and with it slew the prosecutor's young son, who had most imprudently been left alone with him.

As observed already, no one saw the deed done, but the prosecutor and the two witnesses referred to, arrived on the spot, and saw the prisoner pacing the house, where the dead body was, with a bloody *dao* in his hand.

The prisoner made a confession of his guilt to the police darogah the next day, but his statement bears marks of a disordered mind at the time.

The whole of the witnesses examined by the police when the murder happened, and all those who have given their testimony since, agree that the prisoner was insane at the time.

The officer in medical charge deposes that the man was violently mad as soon as he arrived at the station. He is now temporarily restored, but his present condition and his past history induce the medical officer to think, that his recovery is but partial, and that madness is likely to come on again at any time.

The law officer finds him guilty, on violent presumption of the wilful murder, and in this, I agree. The prisoner is, I consider, entitled to his acquittal on the ground of insanity, and I submit the case for the final orders of the superior court in

1854.

June 20.

Case of
HUROCHUN-
DER SHEEL.

order that the special verdict under Act IV. of 1849, may be passed upon the prisoner by the Court, to whom the jurisdiction belongs to pass that order.

It seems that the prisoner became mad from the loss of his property by fire. He became outrageously so after a short space, making it necessary always to have him handcuffed. While in charge of Dr. Scalan, his state has been a fluctuating one, from downright violent madness, to one never thoroughly sane. Such is likely to be his future state, and in recommending his acquittal, I would on no account sanction his release from confinement, so long as there exists the slightest apprehension of a relapse. Indeed, though the man is now said to be cured, his appearance and demeanor assure me that he is any thing but sane, or a safe subject to give liberty to.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and J. Dunbar.) Without relying in any degree on the confession of the prisoner in the mofussil and his subsequent admission before the magistrate, we find the evidence sufficient to afford the strongest possible presumption, that the prisoner committed the murder. We accordingly convict him of the crime charged. The evidence of the medical officer leaves no doubt, that the prisoner was violently mad, when brought to the station, after the perpetration of the act; and that of the friends and relations is equally clear, as to the fact that the prisoner had been mad for some time previously, and was deranged when he killed the boy. We therefore acquit the prisoner, Hurochunder Sheel, because we find that by reason of unsoundness of mind, not wilfully caused by himself, he was unconscious and incapable of knowing, at the time of committing the murder with which he is charged, that he was doing an act forbidden by the law of the land.

It will be for Government to dispose of the prisoner, with reference to Act IV. of 1849, but we think it our duty to record, that although now sufficiently sane to be placed on his trial, the prisoner's madness is evidently of such a nature, that it may return with great violence at any time. Much care will therefore be necessary, with a view to prevent his doing further mischief.

PRESENT :

A. DICK AND J. DUNBAR, Esqs., *Judges*.

HUGGOOA SHAH AND GOVERNMENT,

versus

GOBIND TANTY (No. 1,) JHAFFER KHAN (No. 2 APPELLANT,) ISLAM KHAN (No. 3 APPELLANT,) FOOL MAHOMED (No. 4 APPELLANT,) AND SURROOP TANTY (No. 5.)

Dinagpore.

CRIME CHARGED.—Nos. 1 to 4, 1st count, burglary; 2nd count, Nos. 1 to 5, having possession of stolen property obtained by burglary, knowing it to be such.

1854.

CRIME ESTABLISHED.—Nos. 1 to 5, having possession of stolen property obtained by burglary, knowing it to be such.

June 20.

Case of
JHAFFER

Committing Officer.—Mr. G. U. Yule, officiating magistrate of Dinagpore.

KHAN and
others.

Tried before Mr. J. Grant, sessions judge of Dinagpore, on the 2nd March, 1854.

Five prisoners
convicted of
having stolen
property in
their possession, sentenced
to various
terms of imprisonment. Appeal rejected.

Remarks by the sessions judge.—On the 8th of November, 1853, property (principally gold and silver coins and ornaments) valued at rupees 2,160-8 was stolen from the prosecutor's house, of which rupees 1,219-15 worth has been recovered.

Some weeks afterwards, prosecutor's brother was told by Benga Thakoor that the prisoner Gobind Tanty No. 1, had been endeavouring to sell old rupees in *haut*. The prisoner Jhafter Khan No. 2, was suspected as he had been in the habit of visiting at the prosecutor's house. The said prisoners when apprehended confessed and named their accomplices. The prisoner Gobind Tanty No. 1, confessed in the foudary to having accompanied the thieves Nos. 2, 3, 4 and others who gave him a portion of the booty, and stolen property was produced by them all. The prisoner Surroop Tanty No. 5, had not actually joined the theft, but his plea of having been prevented from giving information at the thannah as to stolen property having been placed in his house, was a failure. The *futwa* of the law officer convicted the prisoners on the 2nd count, and I concurred.

Sentence passed by the lower court.—Each to be imprisoned with labor in irons, Nos. 1 to 4, for seven (7) years and No. 5, for three (3) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and J. Dunbar.) Portion of the stolen property was recovered from all of the prisoners, who also all confessed in the mofussil, such confessions being duly verified; none of the pleas set up by the prisoners on the trial were established, and nothing of any force is urged in appeal. We see no reason to interfere with the sentence.

PRESENT:

A. DICK AND J. DUNBAR, Esqs., *Judges*.

GOVERNMENT,

versus

KHETTER KOWRA (No. 17,) KOMUL BAGDEE (No. 18,) SHOROOOP KOWRA (No. 19,) AND KASHINATH DHARAH BAGDEE (No. 20.)

Hooghly.

1854.

June 20.

Case of

KHETTER

KOWRA and others.

CRIME CHARGED.—1st count, dacoity in the house of Bhogobun Chunder Bundhopadhya at Nowabgunj, on the night of the 19th March, 1847, and 2nd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 24th April, 1854.

Approvers' evidence discovered to be false beyond doubt, therefore Government as prosecutor withdrew from the prosecution & prisoners consequently acquitted and released.

Remarks by the officiating additional sessions judge.—The prisoners were committed by the commissioner for the suppression of dacoity and are charged firstly, with dacoity and secondly, with having belonged to a gang of dacoits. They plead not guilty to the indictment.

* Witnesses Nos. 1 and 2.

The witnesses, marginally* noticed are approvers on the establishment of the dacoity commissioner and prove the first count of the charge against all the prisoners, and the second count against the prisoner, Kashinath Dharah, No. 20. They detail the particulars of the dacoity committed in the house of Bhogobun Chunder Bannerjea of Nowabgunj, on the night of the 19th March, 1847, shewing the prisoners' complicity therein, and mention several instances in which the last named prisoner took part in dacoities committed in various times and in different places.

† Witnesses Nos. 4 and 5.

The witnesses, mentioned in the margin,† prove the fact of the dacoity charged.

The prisoners deny the charge and impute malicious motives to the approvers in giving evidence against them. They call witnesses to character, but the testimony does not avail them.

The approvers' evidence convicts the prisoners, and that evidence is supported by the detailed confessions made by the witnesses, when first apprehended and charged. These confessions are verified by the records of the several magistrates, in whose districts the admitted dacoities took place, and shewn to have been recorded under circumstances which precluded all possibility of collusion between the confessaries. I consider the proof there-

fore conclusive against the prisoners, and convicting the prisoner, Kashinath Dharah Bagdee, No. 20, of both counts of the charge, recommend that he be sentenced to transportation for life. I convict the prisoners, Khetter Kowra, No. 17, Komul Bagdee, No. 18, and Shorooop Kowra, No. 19, of the first count only, and sentence them to sixteen years' imprisonment (two years in lieu of corporal punishment) with labor in irons in banishment, suspending the issue of such sentence until the receipt of the Court's final orders on this reference.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and J. Dunbar.) Sumbhoonath Pundit Government pleader, on the case being brought up for decision, represented to the Court, that the Government did not wish to proceed with the prosecution, as they had not confidence in the evidence for the prosecution.

One of the prisoners Kashinath Dharah had satisfied the committing officer, that he was in jail at the time the dacoity in the house of Bhogobun Chunder occurred, and that the approver, Shorooop, who has deposed to his complicity in it, himself was likewise in jail when it took place. Thus no reliance can be placed on the deposition of that approver, even against the other prisoners; nor can the deposition of the other approver Mudoo-soodun Bagdee be confided in, since he too testified to the said prisoner being present at the said dacoity, and also the 1st approver, when both have been shewn to have been at the time in jail.

We therefore acquit all the prisoners of the charges preferred against them, and direct that they be immediately released.

1854.

June 20.

Case of
KHETTER
KOWRA and
others.

PRESENT :

A. DICK AND J. DUNBAR, Esqs., *Judges.*

GOVERNMENT,

versus

BHOOTNATH DOOLEY ALIAS BHootA DOOLEY (No. 23.) AND DEENONATH CHOONAREE ALIAS DEENA CHOONAREE (No. 24.)

Hooghly.

1854. CRIME CHARGED.—1st count, dacoity in the house of Deegumber Dhoba at Satithan on the 16th February, 1853; 2nd count, dacoity in the house of Roydonath Parooe Kyburt, at June 21. Baheer Ranagachi, on the 5th March, 1853; 3rd count, having Case of

BHootNATH DOOLEY *alias* BHootA DOOLEY and another. Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 25th April, 1854.

Remarks by the officiating additional sessions judge.—The prisoners were committed by the commissioner for the suppression of dacoity and are charged, firstly, with two specific dacoities, and secondly, with having belonged to a gang of dacoits. They pleaded *not guilty* to the indictment.

The witnesses marginally noticed,* are approvers on the establishment of the dacoity commissioner, and prove the charge against the prisoners.

* Witnesses Nos. 1 and 2. They detail the particulars of the dacoities committed severally in the houses of Deegumber Dhoba of Satithan, on the night of the 10th February, 1853, and Boydonath Parooe of Baheer Ranagachi or Bheri, on the night of the 5th March following, showing the prisoners' complicity in both; and mention several other instances in which they took part in dacoities committed at various times and in different places.

The prisoner Bhootnath Dooley *alias* Bhoota Dooley No. 23, confessed before the commissioner for the suppression of dacoity and the persons indicated in the margin,† attest that confession.

† Witnesses Nos. 6 and 7. The prisoners deny the charge and impute malicious motives to the approvers in giving evidence against them. The prisoner, Bhootnath Dooley No. 23, calls no witnesses. His co-prisoner, Deenonath Choonaree *alias* Deena Choonaree, No. 24, cites witnesses to character, but none presented themselves for examination.

The prisoner, Bhootnath Dooley, pleaded guilty before the dacoity commissioner and his confession is recorded. The approver evidence convicts both the prisoners, and that evidence

is supported by the detailed confessions made by the witnesses when first apprehended and charged. These confessions are verified by the records of the several magistrates, in whose districts the admitted dacoities took place, and shown to have been recorded under circumstances which precluded all possibility of collusion between the confessaries. The proof against the prisoners therefore is conclusive, and I propose that they be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and J. Dunbar.) The prisoners are charged with dacoity in two specific instances, and with having belonged to a gang of dacoits. The sessions judge considers the proof against them to be conclusive, remarking that the approver evidence is supported by the detailed confessions made by the witnesses, when first apprehended and charged, which confessions, he observes, are verified by the records of the several magistrates, in whose districts the admitted dacoities took place.

A careful perusal of the record leads the Court to a different conclusion.

In a case such as this, in which the only evidence against the prisoners is the testimony of two convicted dacoits, it is necessary, as the only test of their truthfulness, that their depositions on oath should correspond with their previous confessions, in all essential particulars. Any material difference must naturally raise doubts as to their veracity, and in this case, we are sorry to say, the discrepancies are of a very grave character, as the following abstract will show.

1854.

June 21.

Case of
BHOOTNATH
DOOLEY alias
BHOOTA DOO-
LEY and ano-
ther.

MANICK BAGDEE APPROVER.

Date of original confesions,
4th May, 1853.

Date of depositions before
sessions court, 25th April,
1854.

DACOITY IN THE HOUSE OF DEEGUMBER DHOBA.

Original Confession.

Had committed a dacoity in the house of Deegumber in Sati-
than in Magh last, details parti-
culars of the assembling, poojah,
and attack, implicates the pri-
soners, says that they got booty
to the value of about Rs. 100,
plundered from several houses
on the premises.

Deposition in Sessions Court.

Swears to the dacoity in
Deegumber's house, the pri-
soners were in the gang, pro-
perty plundered to the value of
Rs. 400 (or 500.) The de-
ponent's share Rs. 2.

1854.

DACOITY IN THE HOUSE OF BOYDNATH PAROOEE.

June 21.

*Original Confession.**Deposition in Sessions Court.*

Case of
BHOOTNATH
DOOLEY *alias*
BHoota Doo-
ley and ano-
ther.

In Phalgun last, had a hand in this dacoity, the prisoners were engaged in it, the value of the property plundered about Rs. 100, of which he got a share (not specified.)

Swears to the dacoity. The prisoners were concerned in it, the value of the property plundered was about Rs. 400 (or 500) deponent got some thing (not specified.)

BEHAREE SINGH APPROVER.

Date of original confession
19th July, 1853.

Date of deposition in sessions
court 25th April, 1854.

DACOITY IN THE HOUSE OF DEEGUMBER DHOBA.

*Original Confession.**Deposition in Sessions Court.*

Committed a dacoity in Deegumber's house at Satithan, dacoits beat the master of the house, the prisoners were concerned, the value of the plundered property was about Rs. 400 or 500, of which he got about twenty-five for his share.

Swears to the dacoity in the house of Deegumber Dhoba, was himself one of the leaders. The prisoners were engaged in the dacoity the value of the booty was Rs. 550.

DACOITY IN THE HOUSE OF BOYDONATH PAROOEE.

*Original Confession.**Deposition in Sessions Court.*

Committed dacoity in Boydonath's house. The owner of the house was beaten; the prisoners were there; value of the booty about Rs. 300 or 400; his share Rs. 20.

Swears to the dacoity; was himself one of the sirdars; the prisoners were there; the value of property plundered about Rs. 300 or 400.

Finding that the depositions on oath of the approvers differed so materially from their confessions, as to the amount of property plundered, we looked to see how far either of the statements might be supported by the statements of the sufferers themselves, and by the inquiries of the police instituted at the time. In neither of the above dacoities were the parties examined, either before the commissioner for the suppression of dacoity, or before the sessions judge. The only evidence in connection with these dacoities, independent of the approvers' testimony, is to be found in the thannah papers. From these we get the following results.

Dacoity in the house of Deegumber Dhoba.

Deegumber was examined by the darogah on oath, he was not

beaten, and the dacoits succeeded in carrying off plunder only, from one house, to the value of Rs. 2-11. His statement was verified by the *sooruthal*, and the evidence of his neighbours.

Dacoity in the house of Boydonath Parooe.

Boydonath was examined by the darogah on oath. He said that the dacoity, if such had been intended, had not been effected, but that he believed, it was nothing more than an attempt to carry off some paddy in store in one of his houses, as he was so poor (being a mere cultivator of the soil, and living in a village in which there was even no chowkeedar) that it was scarcely possible, that dacoits should think of attacking his house for plunder, he lost no property whatever. His statement was fully verified by the *sooruthal*, and the evidence of his neighbours.

The commissioner for the suppression of dacoity remarks, in the grounds of commitment in the calendar, that the dacoity at Baheer Ranagachee (that in the house of Boydonath Parooe) was reported as an attempt only, but that it is notorious, that dacoities are reported frequently as attempts, to save the parties the trouble of searching after the offenders. This is undoubtedly true, but neither of the parties in the cases referred to would appear to be in such a condition of life, as to render it probable, that they should sit quietly down under such heavy losses, as they must have sustained, if the present statements of the approvers be true. Looking, however, at the glaring discrepancies between the statements of the approvers as contained in their confessions, and those in their depositions on oath, made within less than twelve months after the former, we have no hesitation in giving the preference to the accounts rendered by Deegumber and Boydonath themselves to the darogah, confirmed and verified as they were by the immediate inquiries of the latter, and which have about them no circumstances of a character to raise a suspicion of concealment. Feeling that we can place no reliance on the evidence of the approvers, we acquit the prisoner Deenonath Choonaree on all the charges. The other prisoner, Bhootnath Dooley, we convict on his own confession, before the commissioner for the suppression of dacoity, which has been duly verified. He refers in that confession to a number of dacoities in which he acknowledges that he was engaged, and the occurrence of eleven of these is certified from the records and thannah reports, now before us. We sentence him to be imprisoned for life in transportation beyond sea.

1854.

June 21.

Case of
BHOOTNATH
DOOLEY *alias*
BHOOTA DOO-
LEY and ano-
ther.

PRESENT:

A. DICK, AND J. DUNBAR, Esqs., *Judges.*

GOVERNMENT,

versus

BHURUT RAI.

Sarun.

1854.

June 22.

Case of

BHURUT RAI.

Prisoner convicted of riot attended with culpable homicide, sentenced to seven years' imprisonment. Appeal rejected.

CRIME CHARGED.—Riot attended with the culpable homicide of Munbodh and Sumbadh.

CRIME ESTABLISHED.—Riot attended with the culpable homicide of Munbodh and Sumbadh.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. Henry Atherton, officiating sessions judge of Sarun, on the 25th April, 1854.

Remarks by the officiating sessions judge.—This case was first reported to the Nizamut Adawlut, on the 3rd September, 1850, the prisoner then absent being noted as one proved by the evidence for the prosecution to have been concerned as a principal in it. He has at length been apprehended, and five eye-witnesses Nos. 1, 2, 3, 4 and 5, who were formerly examined, declare that he is the man who struck Munbodh, deceased, with his iron-bound *lattee*, another, Audit, having also wounded him. The defence of the prisoner is, that he is not the person first of all named Bhurut Rai, but Jugroop Singh, and that the charge is now attempted to be established against him through the enmity of the ticcadar of the mouzah, Chuttoor Rai. The two darogahs who were employed in the investigation having reported him as the real criminal, from his not being willing to pay a sum to secure his release. Witnesses Nos. 6 to 21, inclusive, of different places, declare that he is the man first of all named as concerned in the outrage, and who subsequently absconded and had his property sold, while witnesses Nos. 23, 24, 26, 29, 30, 31, 32, 33, 35, 36, 37, 38 and 39, support the defence, but I agree with the moulvee in considering the charge proved against the prisoner. It is clear that there is enmity between the farmer of the mouzah, to which the defendant belongs, and of which he was formerly a putteedar, and some of the residents, but it does not appear that the prisoner was apprehended at the investigation of the farmer; that the five eye-witnesses belonging to Chutter Chuk are in any way connected with him or under the authority and so as to be likely to depose falsely, and of these five witnesses one is the son of Munbodh deceased, who may naturally be supposed anxious to bring to punishment the real parties by whom his father met his death, and who is not therefore likely to give false evidence against another that would

defeat such object. It was from the first reported that the defendant would probably deny that he was the culprit, that that line of defence having succeeded in the case of another party acquitted at the sessions, held on the 5th October, 1853, but I do not credit the statement made in my court against the darogahs, because I am satisfied that if true, the defendant would have complained to the magistrate, and further enquiry I think unnecessary. The moulvee finds the defendant guilty of the crime charged, and liable to discretionary punishment, and I accordingly sentence the prisoner to seven years' imprisonment with labor in irons from this date, 25th April, 1854.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and J. Dunbar.) The petitioner has urged nothing in appeal of importance. He should have been able to account for his absence from home during several years, and why he did not appear and object to his house being sold. We see no reason for interference with the sentence passed on him.

1854.

June 22.

Case of
BHURUT RAI.

PRESENT:

A. DICK, AND J. DUNBAR, Esqs., *Judges.*

GOVERNMENT,

versus

MUDHOOSOODUN BAR BAGDEE.

Hooghly.

1854.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Seker Roy, deputy magistrate under the commissioner for the suppression of dacoity.

June 22.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 26th April, 1854.

Case of
MUDHOOSOO-
DUN BAR BAG-
DEE.

Remarks by the officiating additional sessions judge.—The prisoner was committed by the deputy magistrate under the commissioner for the suppression of dacoity, and charged with having belonged to a gang of dacoits. He pleads *not guilty*.

The prisoner, who was charged with having belonged to a gang of dacoits, was convicted on the evidence of two approvers, supported by the old records and on his own confession and admissions made when the pri-

The witnesses marginally noticed,* are approvers on the estab-

* Witnesses Nos. 1 and 2. lishment of the dacoity commissioner and prove the prisoner's complicity in nine dacoities, committed at various times in different places.

The party indicated in the margin† proves the fact of one of the above dacoities, the affair having

† Witness No. 3.

taken place in his house.

The prisoner denies the charge and imputes malicious motives to one of the accusing approvers. He names no witnesses to his defence.

The approver evidence convicts the prisoner, and that evidence

1854.

June 22.

Case of
MUDHOOSOODUN
BAR BAGDEE.

soner was arrested and tried for one of the dacoities deposed to by the approvers, but in which he was only punished as a receiver of plundered property.

is supported by the detailed confessions made by the witnesses when first apprehended and charged. These confessions are verified by the records of the magistrates, in whose districts the admitted dacoities took place, and shewn to have been recorded under circumstances which precluded all possibility of collusion between the confessaries. I consider the proof against the prisoner complete and propose that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and J. Dunbar.) The evidence against the prisoner consists of the testimony of two convicted dacoits, admitted as approvers, and the corroboration of their statements furnished by the records notifying the fact of the dacoities referred to in their evidence, at the time of their occurrence, and in one case in addition to these, by the deposition of the person whose house was plundered.

The approvers in their original confessions mentioned each seven dacoities, in which they declared that the prisoner was engaged. In the sessions court they each deposed on oath to the same effect in regard to five, but there is only one, out of all these, in regard to which they both give evidence. The complicity of the prisoner therefore as regards the other eight cases, rests upon the evidence of one witness in each case.

After reading and carefully comparing the confessions, and the evidence, and closely scrutinizing the records in each case, we find enough upon the record to satisfy us as to the guilt of the prisoner. In those cases which rest on the testimony of one witness only, there are some discrepancies which it is difficult to reconcile, but these are probably fairly attributable to the length of time which has elapsed since the dacoities took place, and they are not of such a nature as to shake our confidence in the witnesses, when we find that they are entitled to credit with respect to the case in which both of them appear, and when we find moreover, that in another, the prisoner himself made such admissions as led to his conviction and punishment.

The dacoity at Balee Bazar is that to which both witnesses speak. Each of them in his original confession named the other, and also the prisoner Mudhoosoodun Bagdee. Each now swears to his having taken a part in that dacoity, and the fact of the dacoity is certified by a *roobakaree* drawn up by the deputy magistrate, founded on inquiries instituted at the time. The case in which the prisoner was convicted and punished was the Narajole dacoity in zillah Midnapore. When arrested in the mofussil, the prisoner confessed having accompanied the gang. Subsequently, before the magistrate, he confessed only to having taken charge of and hidden some of the plundered property, giving a very lame account of the manner in which he acquired

it, he was convicted and punished for the minor crime only, but the evidence of the approver Sunkur Chung, in addition to the prisoner's own recorded admissions, leaves no room to doubt now, that he actually took a part in the dacoity.

We accordingly convict the prisoner Modhoosoodun Bagdee of the crime charged, and sentence him to imprisonment for life in transportation beyond sea.

We deem it necessary to draw the sessions judge's attention to the necessity of his giving a more full and complete recital of the evidence in cases of this nature. The Court have been occupied for many hours in looking out and bringing forward all the particulars in the records, connected with the several instances of dacoity referred to by the witnesses. This duty should be discharged by the lower court, and the result so explicitly set forth in the sessions judge's report, that this Court might be able at once to lay their hands on the necessary papers, such for instance as those, which in this case, shewed the general agreement of both the approvers in regard to one dacoity, and furnished evidence from his own confessions against the prisoner, in another. To enable the sessions judge readily to do this, he should direct the committing officer to insert in the column of the calendar, containing the grounds of commitment, an exact statement of the manner in which the records of the several cases support and corroborate the evidence of the approvers. We would note also for the information of the commissioner for the suppression of dacoity, that in charges of this nature, it is very desirable that there should be at least two witnesses to every instance cited, with a view to make good the general charge of having belonged to a gang of dacoits. When there has been no confession, or no plundered property produced, the evidence of one man, and he a convicted dacoit, could not be regarded by any court, as of much weight, unless supported by other direct or circumstantial proof.

1854.

June 22.

Case of
MODHOOSOODUN BAG-
DEE.

PRESENT :

H. T. RAIKES, AND B. J. COLVIN, Esqs., *Judges.*Moorsheda-
bad.

BISHWAMBHUR SEIN AND GOVERNMENT,

versus

1854.

RAMKRIST SIRCAR.

June 23.

Case of
RAMKRIST
SIRCAR.

The crime of
the prisoner
was held to be
theft and not
embezzlement
as found by
the sessions
judge.

CRIME CHARGED.—1st count, having, in, his capacity as servant of the prosecutor, between the month of Bhadro and 7th Kartick, 1260, B. S., corresponding respectively with the month of August or September, and 22nd October, 1853, embezzled certain articles, such as shawls, &c., valued at Rs. 8,951-8, received by and entrusted to him by his master by reason of such employment, and with having fraudulently disposed of the same for his own benefit; 2nd count, theft of the said property.

CRIME ESTABLISHED.—Embezzlement.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedad.

Tried before Mr. D. J. Money, sessions judge of Moorshedad, on the 26th April, 1854.

Remarks by the sessions judge.—The prisoner, Ramkrish Sircar, was in the service of the prosecutor, and had charge of the keys of the *toshakhana*, &c. On the 5th or 6th Kartick, 1260, he absconded with property of the prosecutor to a large amount. On the 23rd October, 1853, Sreeram Napit, another servant of the prosecutor, filed a petition in the magistrate's court, complaining of the embezzlement, and the deputy magistrate, who was in charge of the office at the time, passed an order for the apprehension of the prisoner, and the recovery of the articles upon the recognition of the petitioner.

On the 3rd February, 1854, Prankrist Biswas, Brojo Surdar, and Brojolall Gosyea (prisoners, Nos. 2, 3 and 4, in statement No. 8,) were arrested with a portion of the property in their possession, and afterwards a list of the property stolen from the house of the prosecutor was filed.

The prisoners were at first committed on the charges of theft and knowingly receiving stolen property, but as from the first petition of the prosecutor's servant before the magistrate, the crime was clearly one of embezzlement, the calendar was returned for correction, and instead of the servant being made prosecutor in the case, the deposition of Bishwambhur Sein, his master, was taken as prosecutor.

The prisoner, Ramkrish, in his defence, stated that he was the servant of the prosecutor and had the charge of the *toshakhana*, &c., and that in accordance with the directions of his

master, he took out the articles, Nos. 1 to 5, from the house of the prosecutor, and pawned them to Prankrist for 150 Rs., which he paid to the prosecutor.

The trial was carefully conducted and two of the prisoners had the benefit of counsel. The assessors, who sat with me on the trial and attentively watched the proceedings, considered the charges proved against all the prisoners, but I was constrained to differ from them in their verdict.

The first point necessary to be proved in a case of embezzlement like this is the fact of the principal prisoner, No. 1, being the servant of the prosecutor. Of this there can be no doubt. Besides evidence to the point, it is admitted by the prisoner. The next point is whether the property which he is charged with embezzling was the property of the prosecutor and entrusted to his care. Of this too there can be no doubt. Besides other evidence, it is admitted by the prisoner. He declares that he pledged the shawls by his master's order for money, which he paid over to his master. It is proved that the shawls were pledged to the prisoners, Nos. 2 and 4, and it only remains to determine whether this transaction took place with or without the prosecutor's cognizance. If he was not cognizant of it, it was a breach of trust on the part of the prisoner, No. 1, and a fraudulent disposal of the property for his own use, for which he would justly merit punishment.

Although the prosecutor, in the previous stages of this case, evinced great indifference and laxity, and appears to have been ill-represented by his agents in their complaints before the magistrate, and although no implicit confidence can be placed in the valuation of the property said to have been embezzled, the statements of the agents differing, and his own account not having been furnished till after the prisoners, Nos. 2, 3 and 4, were apprehended, still from his respectability and the evidence adduced, I have no reason to doubt the fact that the property was pledged without his knowledge, and that therefore the prisoner, No. 1, was guilty of embezzlement.

The prosecutor however appears to have had frequent interviews with the prisoner No. 1. He came and was seen on different occasions at the prosecutor's house, after the charges had been made before the magistrate, and from the evidence given regarding these interviews, I can come to no other conclusion than that the prisoner had been an old and faithful servant in the family, that implicit trust was reposed in him and no security taken for the charge of much valuable property, and that he was perhaps in the habit of pledging articles for his master, whenever there may have been necessity, and that it is probable the prisoner, when he pledged these shawls, thought to obtain afterwards his master's sanction. This does not exculpate him. He was still guilty of embezzlement, but the appeals

1854.

June 23.

Case of
PRANKRIST
SIRCAR.

1854. he made to his master during the interviews for forgiveness
make the case one of a less heinous character.

June 23. The prisoner's subsequent conduct in declaring that he had
not only pledged the articles for his master, but paid him the
Case of money and his reason for the accusation brought against him,
RAMKRISHN viz. that he had had connection with one of his master's servants
SIRCAR. only aggravates the offence. I sentenced him to three years' imprisonment with labor without irons and a fine of 50 Rs. in lieu of labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) We see no reason to think the facts of this case are other than as stated by the sessions judge. But those facts do not prove embezzlement, but establish the crime of theft against the prisoner.

The property made away with was only in the custody of the prisoner; possession of it had not been relinquished by his master when he entrusted his servant, the prisoner, with the care of it. When the prisoner therefore removed and disposed of this property for his own use, he stole the same. Had the prisoner pledged the shawls with his master's sanction and appropriated the money to his own use, he would then have embezzled the same, but as the case stands the prisoner must be convicted in the last charge in the indictment, viz. theft of the said property.

Under these circumstances we record a conviction of theft against the prisoner and sentence him to three years' imprisonment with labor.

PRESENT :

H. T. RAIKES, AND B. J. COLVIN, Esqs., *Judges.*

HURYNARAIN BOSE, AND GOVERNMENT,

versus

RAMSAUGUR GHOSE.

Hooghly.

1854.

June 23.

Case of
RAMSAUGUR
GHOSE.

CRIME CHARGED.—1st count, committing a dacoity in the house of the prosecutor, Hurynarain Bose, in which the prosecutor was wounded, and plundering therefrom property valued at Co.'s Rs. 8-8, viz., brass and bell metal utensils for domestic use, worth Rs. 6-4 and cloths worth Rs. 2-4, total Co.'s Rs. 8-8; 2nd count, knowingly retaining in his possession a portion of the plundered property.

CRIME ESTABLISHED.—Dacoity with wounding.

Committing Officer.—Mr. K. H. Stephen, deputy magistrate of Serampore.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 3rd April, 1854.

The prisoner's witnesses deposed to nothing in support of his defence, while the evidence against him was conclusive. His appeal was therefore rejected.

Remarks by the officiating additional sessions judge.—This is a case of dacoity, in which the proof of the prisoner's guilt is quite conclusive. The prosecutor's house was attacked on the night of the 21st February, by a gang of about twelve or fourteen dacoits. They broke into the room he and a nephew of his occupied, with a lighted torch, and began to beat them. As foremost of the assailants he distinctly recognized the prisoner, with whom he was on terms of intimacy and whom he addressed by name during the assaults, imploring him to desist. On his making this personal appeal, he was abused by an athletic young man, who stood by the prisoner and made a cut at his head with a sword, which he warded off with his hand. In doing this, he received a wound, which together with the beating he had already received, made him insensible. He recovered under the care of two of the villagers (witnesses Nos. 11 and 12,) who found him in that state after the departure of the dacoits, and had scarcely regained consciousness, when the prisoner was brought to his house in custody of the police, together with two articles of the plundered property which he at once identified. Before the arrival of the prisoner, the prosecutor had named him to the two villagers as the party who assaulted him during the dacoity. The witnesses, Nos. 1 and 2, are policemen, who seized the prisoner with the stolen property immediately after the occurrence. They were on their rounds, when they were attracted by the hubbub of the dacoity, and repaired forthwith to the prosecutor's house, but on reaching it, found that the dacoits had quitted it. They followed in the direction they

1854.

June 23.

Case of
RAMSAUGUR
GHOSE.

were alleged to have taken and the burkundaz was fortunate enough to secure the prisoner near his house, but the prisoner's brother and some relatives came out to his rescue and would have carried him off, but for the timely arrival of the jemadar and his party. The prisoner is a man of notoriously bad character and placed specially under the surveillance of the local police. The prisoner pleads an *alibi* and unlawful arrest, but utterly fails to establish the pleas; the seven persons examined on his behalf, professing entire ignorance of the circumstances stated in his defence.

Sentence passed by the lower court.—Imprisonment with labor and irons in banishment for fourteen years and in lieu of corporal punishment for two years more, in all sixteen years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and B. J. Colvin.) The defence set up by the prisoner is that he was sleeping at his threshing floor, on the night in question, when the police came and without any reason arrested him and accused him of a dacoity which, he alleges, never even took place. The evidence for the prosecution is however conclusive against him, while prisoner's witnesses depose to nothing in support of his defence. We reject the appeal.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, Esqs., *Judges.*

PURAN CHUNDER AND GOVERNMENT,

versus

Hooghly.

BUDUN CHUNDER CHUCKERBUTTY.

1854.

June 23.

Case of
BUDUN
CHUNDER
CHUCKER-
BUTTY.

CRIME CHARGED.—Burglary in the house of the prosecutor Puran Chunder Chuckerbuttery and theft of a silver bracelet and *hookah* bottom, value at Rs. 8-8, on the night of the 7th February, 1854.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 5th April, 1854.

The prisoner's appeal was rejected on the evidence against him.

Remarks by the officiating additional sessions judge.—This is a very clear case of burglary and theft. The prisoner taking advantage of the prosecutor's absence from home, broke into his house and had secured some light silver articles, when the females of the house hearing a noise began to scream out. Their cries for help attracted the attention of the watchman of their quarter of the village. They hastened to the spot and arrived in time to see a man run away from the premises. They followed and

secured him and found on his person the silver things he had carried off, a *sind kati*, or implement for house-breaking and a knife. They brought him in custody to the prosecutor's house where they saw the perforation in the wall he had made. The above facts are clearly established by the witnesses for the prosecution Nos. 1, 2, 3, 4 and 5. The prisoner denies the charge and states that he was unjustly and unlawfully made prisoner by the witness No. 1, but assigns no cause for the malicious proceeding. There are no witnesses named to his defence. I have no doubt of the prisoner's guilt and award him a heavy sentence, in consideration of his previous conviction of burglary and imprisonment, on two occasions, in default of security for good behaviour.

Sentence of the lower court.—To be imprisoned with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) The prisoner has appealed and in his petition acknowledges his previous convictions; he was seized on the spot; at first his name was not known, but was afterwards ascertained. We reject the appeal.

PRESENT :

SIR R. BARLOW, BART., H. T. RAIKES, AND B. J. COLVIN, Esqs., Judges.

GOVERNMENT AND SUBANEE MUNDUL,

versus

ULLEE MUNDUL.

Rajshahye.

CRIME CHARGED.—1st count, dacoity; 2nd count, knowingly taking and being in possession of property obtained by dacoity, and 3rd count, privy.

CRIME ESTABLISHED.—Knowingly receiving property plundered in dacoity.

Committing Officer.—Mr. J. C. Dodgson, magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 22nd April, 1854.

Remarks by the sessions judge.—This was a simple dacoity, and on searching the house of the prisoner, No. 4, (the son of a chowkeedar,) a *karoo*, or silver bracelet, was found in an earthen jar, used for keeping paddy. The prisoner had absconded, and his grandmother said the *karoo* was not theirs. I have therefore convicted him on the 2nd count, and sentenced him as stated below. The trial was held under Act XXIV. of 1843, and the Court's Circular Order of the 5th July, 1844.

1854.

June 23.
Case of
BUDUN
CHUNDER
CHUCKER-
BUTTY.

1854.

June 29.
Case of
ULLEE MUN-
DUL.

Prisoner convicted at the sessions of knowingly receiving plundered property acquitted in appeal owing to the insufficiency of the evidence.

1854. *Sentence passed by the lower court.*—Three years' imprisonment with labor and irons.

June 29. *Remarks by the Nizamut Adawlut.*—(Present: Sir. R. Barlow, and Messrs H. T. Raikes and B. J. Colvin.)

Case of
ULEE MUN-
DUL.

Mr. H. T. Raikes.—I cannot concur in this conviction. The bracelet is said to have been found in a paddy jar in the prisoner's house in his *baitukkhana*.

This is not a place likely to have been selected by the prisoner himself for concealment, and is open to all comers; besides this the house was searched and the bracelet discovered in the prisoner's absence.

There is not a particle of proof against the prisoner of any complicity in the dacoity, nor is he a man of bad character, nor is the dacoity proved against any one, a conviction on such slight grounds cannot, in my opinion, be upheld, and I would acquit.

Mr. B. J. Colvin.—I do not concur in acquitting the prisoner. The dacoity occurred on the 29th November. The prosecutor, when the darogah commenced enquiries on the spot, on the 1st December, did not implicate the prisoner, so that there was no design on his part to charge him. He was first named on the 2nd by Bukhaye Manjee, as having been seen with others on the evening of the dacoity, under suspicious circumstances, and on his house being that same day searched, the *karoo* was found. The prisoner and his father were both absent, although the latter is a chowkeedar, and were not apprehended till the 5th December. The cause assigned for their absence that they had gone to purchase mulberry leaves is not proved, and there is no evidence to the fact of enmity with Bukhaye Manjee, who first denounced the prisoner. I would not interfere with the conviction and sentence.

Sir R. Barlow.—I place no reliance on the evidence to the production of the property, a bracelet, *karoo*, alleged to have been found in the prisoner's possession.

The darogah before the magistrate stated it was brought out of an earthen pot, within the prisoner's house, facing to the south.

The jamedar deposed it was, as he believed, in a house facing to the west.

One witness said it was found in the *verandah* and called the ornament a *kun kun*.

Two others said it was produced from near the house facing south.

Before the sessions, Benode said the property was found within the house, *not in the verandah*, he was the person who produced it, the other two witnesses swore it was produced from the inside of the house, *baitukkhanna*, which others had opportunity of entering.

The evidence is unsatisfactory and insufficient, especially with reference to the fact that the property was not produced from any part of the house, which was private and inaccessible to strangers. I concur in the acquittal.

1854.

June 29.

Case of
ULEE MUN-
DUL.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, Esqs., *Judges.*

TAHUL PHERIHAR AND GOVERNMENT,

versus

NUCKCHUD DOSADH (No. 1,) MONARUT DOSADH (No. 2,) AND MOOLCHAND DOSADH (No. 3, APPELLANT.)

Sarun.

CRIME CHARGED.—1st count, highway robbery; 2nd count, theft of cloth valued at fourteen annas.

1854.

CRIME ESTABLISHED.—Highway robbery.

June 30.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Case of
MOOLCHAND
DOSADH

Tried before Mr. H. Atherton, officiating sessions judge of Sarun, on the 28th March, 1854.

appellant, and
others.

Remarks by the sessions judge.—This is a case of simple highway robbery. Tahul, the complainant, a resident of the Shahabad district, was proceeding towards his home from the Purneah district, to which he had been to dispose of blankets and from which he had taken the precaution of remitting the proceeds of his sale by *hoondie*, when on the 12th February, 1854, about three o'clock in the afternoon, as he was journeying along the high road crossing the Mohiwan *chur* within the chuprah thanah jurisdiction, he met the three defendants coming from the opposite direction, and who, just as they had passed him, turned round and seized him by the throat. His cries were heard by the witnesses, Nos. 1, 2 and 3, who were close at hand grazing their cattle and who instantly ran to his assistance and seized on the spot defendants Nos. 1 and 2, the other whom they recognized escaping with a cloth, a woman's *dhuti*, which the plaintiff had over his shoulders. The defendants seized were at once taken towards Mohiwan, near which the robbery took place, and delivered over to witnesses Nos. 4 and 5, who hearing an outcry went out and found the prisoners in the hands of their captors, witnesses Nos. 4 and 5, with the plaintiff and defendants Nos. 1 and 2, proceeded the same afternoon to the thannah, and the investigation being entered on, the defendant No. 3, was apprehended on the 14th. In defence, defendant No. 1, Nuckchud, says that he went to Mohiwan and at a drinking-place met plaintiff and the witnesses, and that he got drunk and can't tell why he was seized; Monarut defendant

Appeal re-
jected. The
evidence be-
ing conclusive
against the
prisoners.

1854. No. 2, says that when on his way to Sahebgunge bazar he
 June 30. found at Mohiwan, witnesses beating Nuckchud No. 1, and
 that on his forbidding them he was himself beaten and that at
 the thannah to which he went to complain, a bribe was demand-
 ed of him and he was made a defendant. Neither defendants,
 Case of Nos. 1 or 2, have any evidence in support of their defence.
 MOOLCHAND Moolchand, defendant No. 3, states that he was about a *cosse* off
 DOSADH at another village, and he produces two witnesses to support
 appellant, and his defence, urging also that the witnesses to the prosecution
 others. are his enemies and that he surrendered himself on hearing he
 was sought by the police. Of the truth of the plaintiff's state-
 ment there can I think be no doubt. He lost little and had
 therefore no object in preferring a false charge. The prisoners
 were instantly recognized by the witnesses, being neighbours
 and of old known to them, and the name of Moolchand, defend-
 ant No. 3, was at once taken. The witnesses state that the
 prisoners were not drunk when seized, and though it does not
 appear that the plaintiff was beaten or otherwise ill-treated, yet
 that probably was, because there was no time or need for it.
 Plaintiff was overpowered instantly, but the crime committed
 is not the less robbery by open violence. The defendants it is
 said had sticks, and but for the timely aid rendered, might have
 further ill-used the plaintiff. The Moulvie convicts all the prison-
 ers of highway robbery, and finding the charge proved against all I
 sentence Monarut, defendant No. 2,—who has been twice previ-
 ously convicted, once of burglary and theft and sentenced to five
 years' imprisonment, and once of cattle-stealing and sentenced
 to three years' imprisonment,—to fourteen years' imprison-
 ment in banishment with labor in irons, and defendants No. 1,
 formerly imprisoned one year for bad character, and No. 3,
 to seven years' imprisonment each in banishment with labor
 in irons from this date, 28th March, 1854. There is such utter
 insecurity of property from the depredation of people of this
 class,—it so rarely happens that travellers when robbed of prop-
 erty of small amount will complain,—that a severe example must,
 I think, be made in all cases successfully prosecuted. A cloth
 only was lost in this case, but that was accidental. From the
 way in which the plaintiff is described as having been handled
 by the defendants, it is clear they searched for money on his
 person, and which would have been secured if there had been any
 on him.

Remarks by the Nizamut Adawlut.—(Present : Messrs. H. T. Raikes, and B. J. Colvin.) The sentence passed on the prisoners, Nos. 1 and 2, was confirmed by this Court, on the 12th of May last, when appeals from those prisoners were heard and disposed of. The prisoner now appealing is No. 3, and we find the facts concerning him to be proved, as detailed by the sessions judge in his remarks on the trial. We reject this appeal.

PRESENT :

H. T. RAIKES, AND B. J. COLVIN, Esqs., *Judges.*

MUDHOOSOODUN BUNGO AND GOVERNMENT,

versus

KYLASS DALAL (No. 24.) RAMLALL PURA-MANICK (No. 25.)

Nuddea.

1854.

CRIME CHARGED.—1st count, theft of a pair of silver *balas*, value one rupee, with attempt at murder of Gopal *chokra*, son of the prosecutor Mudhoosoodun Bungo; 2nd count, theft of a pair of silver *balas*, value one rupee, with attempt to do some bodily injury to Gopal *chokra*, son of the prosecutor Mudhoosoodun Bungo.

Committing Officer.—Baboo Issur Chunder Ghosaul, deputy magistrate of Santipore.

Tried before Mr. A. Sconce, sessions judge of Nuddea, on the 22nd June, 1854.

Remarks by the sessions judge.—The prisoners Kylass and Ramlall, aged respectively twenty-one and twenty years, had been for about a month in the service of the prosecutor Mudhoosoodun; they assisted him in weaving and did other work. In the forenoon of the 27th Bysakh last, after his morning meal, prosecutor went to sleep. Just before, the two prisoners sat smoking, near them the prosecutor's child Gopal. After an hour or two, prosecutor awoke and was told the prisoners had taken away and tried to drown his boy. He went and saw Chamun Singh chowkeedar bringing the two prisoners bound, while some one else carried his child.

Okhoy Shah and Nussee Ram, two young men are the principal witnesses in this case. They live in Nutoongram about a mile or a mile and a half off Santipore where prosecutor resides. On the forenoon of the day on which the crime occurred, Okhoy Shah had gone to ease himself outside the village; he saw the two prisoners strip off two *balas* from the child Gopal's arms; he beckoned to Nussee Ram who was passing and they both watched the further proceedings of the prisoners. Kylass Dalal led the child into a hole full of water, Nussee Ram heard Kylass say to the boy he would bathe him. At the same time the other prisoner Ramlall stood looking about; his eyes fell on the two witnesses; he gave the alarm to Kylass and they both ran pursued by the witnesses who, after a short time, seized them. When Kylass ran, the child fell partly in the water, and partly on land. Next morning one of the *balas* was found on the grass near the hole. The hole had water enough to reach above a man's waist.

June 30.
Case of
KYLASS DA-
LAL and an-
other.

The prisoners were held to have done nothing amounting to an attempt on the life of the boy, whose personal ornaments they stole, they were therefore only convicted of theft.

1854. The child Gopal is only five years old, and has not been examined.

June 30.
Case of
KYLASS DA-
LAL and an-
other.

In defence, the prisoners say that as they proposed to go and get mangoes, Gopal wished to go with them, they were unwilling to take the child, but his mother bade them do so; she took off the *balas* lest they should be lost; when they reached the mango trees and gathered mangoes, they were seen by the witnesses Okhoy and Nussee Ram, who quarrelled with them and brought other villagers and seized them as thieves. Prisoners adduced witnesses to character only.

To the deputy magistrate, both prisoners said that at the mango garden Kylass took off the child's *balas*, lest they should drop.

The Jury who sat with me convicted the prisoners of theft only, but it appeared to me that this verdict fell short of the presumption derivable from the evidence. I think that the prisoners not only stole the boy's *balas*, but that they were about to drown the boy with a view to conceal their theft. I judge from the unexceptionable evidence of Okhoy Shah and Nussee Ram, from the distance to which the prisoners carried the child, and from their guilty flight on being discovered. I would convict the prisoners of the theft of the child Gopal's *balas* attended with an attempt to murder him; but I think that a sentence of imprisonment short of the whole life will be adequate punishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) We think that the intent to drown the boy is only presumable in this case, with the object of preventing his telling who robbed him, but the prisoners, as far as we can judge from the evidence, committed no overt act amounting to an attempt upon his life. They forewent their purpose on being disturbed by the witnesses, Nos. 1 and 2. We therefore convict them of theft of the boy's ornaments; and, advertent to their being servants of his father and the suspicious circumstances under which the offence was committed, we sentence them to five years' imprisonment with labor in irons.

PRESENT :

H. T. RAIKES, AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT AND CHOTOO KHAN,

versus

MUSSUMUT ROOPBANEE (No. 18,) SHEIKH KULAYI
(No. 19.)

Backergunge.

CRIME CHARGED.—Wilful murder of Hyeut Khan.

1854.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

June 30.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 15th June, 1854.

Case of

Remarks by the sessions judge.—The deceased and his wife prisoner No. 18, Roopbanee had, to within ten days of the murder, lived in the same home-stead with the prisoner No. 19, other.

Kulayi. An attachment grew up between the wife and the prisoner, which the deceased becoming aware of, he left the male prisoner's house, taking his wife with him, and went to live with his brother, whose house was next door. The deceased ate his dinner on the evening of the 12th May, cooked by his wife the

The prisoners were convicted of the murder of the husband of the female prisoner, by poisoning; and sentenced capitally.

* Witness No. 10, Musst. Doofa.

female prisoner,* and shortly afterwards beginning to experience internal uneasy sensations, he called

for his brother, the prosecutor, and told him that he felt his tongue unusually contracted and his teeth throbbing at the roots, and that he suspected strongly that his wife had poisoned

him. At his bidding the prosecutor called in the neighbours,†

† Witness No. 2, Hudrutoolah.
No. 7, Ally Mohamed.
No. 8, Ukburoollah.
No. 9, Ketaboodin.
No. 11, Azim Shah.
No. 12, Ema Gázee.

by which time the symptoms had considerably increased, the deceased was tossing and rolling on the floor and vomiting frequently. The chowkeedar†

† Witness No. 1, Nushye chowkeedar.

having been sent for and hearing that the deceased had sus-

pected that the male prisoner had instigated his wife to give him poison, went and fetched him. On being questioned he immediately admitted before the assembled villagers that he procured some poison from Parahaut for the female prisoner, for the purpose of giving it to the deceased, in order to cause his death, and so facilitate the adulterous intercourse which he and the female prisoner had resolved on carrying on together. The female prisoner at the same time admitted that she administered the poison with the intention of thereby causing her husband's

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other.

death for the purpose avowed by the male prisoner. Either just before, or just after, these admissions (midnight) the deceased expired, and the chowkeedar started immediately to inform the police. The darogah arrived the next day, and both prisoners admitted their guilt: the male prisoner stating that the female prisoner supplied him with means to buy the poison for the avowed purpose of poisoning her husband, that he purchased it and delivered it to her; and the female prisoner admitting, that she and the male prisoner her paramour, had concerted to poison the deceased, that she got the male prisoner to procure her the poison which she pounded and mixed with molasses and milk, and gave her husband the evening before he died.

On being forwarded to the magistrate the two prisoners made very nearly the same confessions, which they respectively did in the mofussil.

None of the poison was found, and unfortunately the body arrived at the station in a state too far decomposed to render a *post mortem* examination of the stomach practicable.

The evidence at the sessions consists of the testimony of the parties who were called in on the night of the occurrence. The symptoms they describe the deceased to have been laboring under, are just those which are well known to attend the introduction of poison into the stomach. They say the deceased was in good health previously, and when it was evident that the deceased was fast dying, the two prisoners confessed in their presence the parts they had each been guilty of. They confessed again when put upon their defence before the police, and they adhered to their respective statements when examined before the magistrate. These statements are proved by the witnesses in whose presence they were delivered.

The defence at the sessions of the female prisoner is, that she gave the deceased some substance, which Turrufdee and Gynsuddin gave her as medicine, that she took it to be so, and gave it accordingly. Turrufdee and Gynsuddin, she says, are in some way related to her late husband, and live one *puhur* off.

On her thannah and foudjary confessions having been read aloud to her, she was asked whether she admitted having made them. To this she replied that they were her confessions, that they were true, and that she had been put up by a man in jail to make the defence she had done at the sessions.

The defence of the prisoner Kulayi at the sessions was, that Gynsuddin and Turrufdee, to whom the female prisoner must before have spoken, gave him two pice worth of something they called medicine to give to the female prisoner, that he did not know what it was, and that he protested at the time, in presence of Kittaboodin and Azmut, that he was innocent of any consequence which the use of the medicine might occasion, that he gave the thing to the female prisoner, as he was instructed, and

is innocent of any design or intention of destroying the life of the deceased. 1854.

It is to be remarked, that at the thannah and before the magistrate, the prisoner stated that he bought the poison from a party with whom he was not acquainted, and that no one was present when he made the purchase. However, I considered it advisable to send for the persons he named in his defence at the sessions, as having witnessed his receipt of the poison from Gynsuddin and Turrufdee, who called it medicine.

The evidence of these witnesses is, that Gynsuddin and Turrufdee gave the prisoner Kulayi something or other in their presence, telling him to give it to the proper person and tell no one else of it.

Presuming that there can be no reasonable doubt that the deceased died from the effects of some poison administered to him, the proved confessions of the male prisoner before the darogah and before the magistrate establish that he procured the poison, knowing it to be so, for the purpose of having it administered to the deceased in order to cause his death, when he and the female prisoner might carry on their adulterous intercourse without let or hinderance. The confessions of the female prisoner prove her to have administered the poison, for the purpose of procuring her husband's death. That death did ensue from poison is plain from all the circumstances of the case. Unfortunately no poison was found in either of the prisoners' houses, and there was no *post mortem* examination, or the proof of death by poison might have been direct and complete. Had such evidence been forthcoming, I should have been constrained to recommend a capital sentence upon the female prisoner at least. As it is, and agreeing in the verdict of the jury, I would sentence the prisoners to imprisonment for life, the male prisoner in transportation and the female prisoner in the zillah jail, the latter as a principal in the wilful murder of her husband by poison, and the former as an accessory to the same before the fact.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) The confessions of the two prisoners are remarkably consistent and even in the absence of any *post mortem* examination, leave no room to doubt that the deceased's death was the effect of poison. The deceased was in good health up to the time when he took the milk and treacle, in which the female prisoner states she administered the poison to him. What the poisonous ingredient was, is the only matter of doubt, but the symptoms preceding the death, which so rapidly followed, can only be accounted for by attributing them to the effects of some deadly drug. The prisoners in their confessions from the time they were first accused by the dying man, in the presence of the villagers, up to the time they were ex-

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amined by the magistrate, have never differed as to the share they each took in the murder. They both admit that they had long determined to get rid of the woman's husband, that they might freely indulge their passion for each other, and it was at last agreed that poison should be employed to effect their purpose, that accordingly the woman gave the male prisoner some rice to sell to provide the means of purchasing the poison; which he effected at Parahaut, a day or two before the murder, and gave it to the woman, who afterwards procured from the male prisoner some milk, in which she mixed it with treacle and gave her husband to drink.

The woman though first pleading *not guilty* at the sessions, did not swerve from admitting the truth of her previous confessions, and though the male prisoner had apparently concocted a story to meet the chief points of the evidence against him, the witnesses cited by him at the trial prove nothing to induce us to discredit his confessions, which appear highly trustworthy in all particulars.

Seeing no extenuating circumstance whatever in the cold-blooded and determined acts of the prisoners, done with the sole intent of getting rid of the deceased, that they might indulge their adulterous connection with impunity, we condemn both the prisoners to suffer death.

SUMMARY CASE.

PRESENT :

H. T. RAIKES, AND B. J. COLVIN, Esqs. *Judges.*

GOVERNMENT AND KYLASS TILEE,

versus

MANICK ALIAS SOOJUN BAOREE DAGGEE (No. 3.)
NIMAE BAOREE (No. 4.) RAM CHUNDER GHOSE
MUNDUL (No. 5.) SREERAM MUNDUL (No. 6.) AND
PRANKISTO KOONDOO (No. 7.)

Beerbhoom.

CRIME CHARGED.—First count, dacoity attended with torture, committed in the house of Kylass Tilee, plaintiff, from whence property to the amount of Rs. 182-13 was plundered; second count, knowingly receiving property acquired by committing the above mentioned dacoity. The prisoners, Nos. 3, 4, 5 and 6, charged with crime No. 1. The prisoner No. 7, charged with crimes Nos. 1 and 2.

Committing Officer.—Mr. H. Rose, officiating magistrate of Beerbhoom.

Tried before Mr. W. T. Taylor, officiating sessions judge of Beerbhoom, on the 15th May, 1854.

Remarks by the officiating sessions judge.—This case appears to be thus. On the 24th of Chyite, or 5th of April, 1854, the prisoners Nos. 3, 4, 5, 6 and 7 went with others armed with swords and *lattees*, and attacked the house of Kylass Tilee, the prosecutor, and one Dassee Tilin, in the village of Rajpore, at the dead of night and assaulted both with *lattees* also others. The said Dassee Tilin was seriously burnt on the lower part of her body by prisoner No. 7. The prisoners having obtained the knowledge where the rupees and jewels were concealed, robbed the house and departed.

Prosecutor Kylass, states, that on the night of the 24th of Chyite, he was aroused from sleep at about 12 o'clock and saw a light on the premises and heard a noise, he went out of the apartment where he was sleeping and was seized by the prisoners Nos. 3 and 4, who beat and bound him. He then saw others beat Dassee with *lattees* and one burn her with a *mussal*, when she pointed out where her rupees were kept, also jewels. The dacoits then robbed the house and departed. He (prosecutor)

- * No. 2, Deenoo Chowkeedar.
- „ 3, Ruttun Mal.
- „ 4, Mudhoo Chowkeedar.

from the neighbourhood came soon after, but no traces could be

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and others.

In a case of dacoity attended with torture, the sessions judge proposed a sentence of fifteen years' imprisonment in transportation. The case was remanded to him to pass his own sentence, transportation for a period less than life not being legal under Sec. 8, Reg. 53 of 1803, and it being within the judge's own competence to pass a sentence of sixteen years' imprisonment in such a case.

released three parties, witnesses Nos. 2, 3 and 4,* who were on the premises and had been bound and beat by the dacoits. People

1854. found of the robbers. He recognises the property found, a *thalee*, as his.

June 9. The prisoners all plead *not guilty*.

Case of Prisoners Nos. 5, 6 and 7 were assisted by Goolam Myood-deen *vakeel*.
MANICK alias
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 and others.

Dassee Tilin, corroborates the evidence of the prosecutor; she recognises the whole of the prisoners Nos. 3, 4, 5, 6 and 7, as being of the gang who attacked her and robbed the house; that No. 7 was the party who burnt her with the *mussal*; that Nos. 6 and 7 were armed with swords; that one Kumla (a very old woman) who was with her, was also assaulted.

Witness No. 2, Deenoo Chowkeedar, corroborates the evidence of the prosecutor and the witness Dassee, and states he was within the premises of the prosecutor, he heard a noise at the outer door and enquired who was there, was answered, thannah burkundazes on their round, he opened the door and went out, he was seized and bound and then taken within the premises, he saw the assault committed on witness No. 1,*

* No. 1, Dassee Tilin.
 and recognizes the prisoners Nos. 3, 4, 5, 6 and 7, as being of the party who attacked and robbed the house; prisoners Nos. 5, 6 and 7, were dressed as burkundazes. Prisoner No. 5, was armed with a sword. He recognises the *thalee* found in the premises of prisoner No. 7, as the property of the prosecutor. Witness No.

† No. 3, Rutton Mal.
 3,† who heard a noise at the house, and came to see the cause, states, he was seized and bound by the dacoits and recognises prisoners Nos. 4, 5, 6 and 7, as being present and the party who committed the robbery.

Witness No. 4,‡ who was with witness No. 2,§ within the premises No. 2, corroborates his evidence and recognises prisoners Nos. 3, 4, 5, 6 and 7, as being of the gang who attacked him and the rest, also robbed the house and premises; he recognises the property found in the house of prisoner No. 7, as that of the prosecutor.

Witnesses Nos. 8, 9, 10 and 11,|| prove the confessions made voluntarily by the prisoners Nos. 3 and 4, in the mofussil; also witnesses Nos. 12 and 13,¶ to that made by the same party before the acting magistrate. The confessions implicate the

three other defendants, and the reason for their being made was, that Nos. 3 and 4, had not received their share of the spoil when a division was made under a tree, near a tank, in the vicinity of the village of Patea, where prisoners Nos. 5 and 6,

- || No. 8, Nittanund Majoomdar.
 No. 9, Kenaram Mundul.
 No. 10, Becharam Mundul.
 No. 11, Rakhal Kybert.
 ¶ No. 12, Ramsoonder Chuckerbutty.
 No. 13, Sham Chund Chowdhree, Mooktears.

- * No. 14, Sreenath Mitter, Gomashta.
- No. 15, Muthoor Bhandary.
- No. 16, Gopal Chunder Roy.
- † No. 19, Sutoo Chowkeedar.
- No. 20, Chytun ditto.

reside. Witnesses Nos. 14 to 16,* prove the finding of the property stolen, on the premises of No. 7, prisoner. The other witnesses† prove the absence of prisoners Nos. 5 and 6, from their village on the night of the occurrence,

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and to have seen prisoner No. 7, on the 24th of Chyte, at the village of Patea, where Nos. 5 and 6, prisoners, reside.

Prisoner No. 3, Manick, alias Soojun Baoree Daggee, in defence states, he confessed in the mofussil, being forced so to do by the ill-usage he had received from the thannah darogah, that he had been kept without food for four days; at the time his

- ‡ No. 21, Rakhal Mundul.
- No. 22, Mohun ditto.
- No. 23, Rajaram Burkundaz.

confession was made before the magistrate, he was not in his senses. He calls three witnesses Nos. 21, 22 and 23.‡ The evi-

dence of the witnesses does not prove the statement.

Prisoner No. 4, denies all knowledge of the dacoity and declares that the confession, made by him in the mofussil, was forced from him by the ill-usage received from the police; that he has no recollection of that made before the acting magistrate. It might have been made at the persuasion of Buddee burkundaz. He calls no witnesses to support his statement.

Prisoners Nos. 5 and 6, make the same defence. They deny having any thing to do with the dacoity; that they have been implicated by the prisoners Nos. 3 and 4, owing to an ill-feeling existing between them; that the seventeen witnesses they have called will prove they were during the night of the 24th Chyte, i. e. 8 P. M., of that day till 3 A. M. the following day, at a watch held in their village.

- § No. 24, Seefoo Thakoor.
- 25, Khethernath Thakoor.
- 26, Benode Sow.
- 27, Chinibass Sow.
- 28, Sreenath Gurain.
- 29, Beny ditto.
- 30, Koochil Sow.
- 31, Koochil Kamar.
- 32, Kungal Moochee.
- 33, Ramsoonder Mundul.
- 34, Ramrutun Mookerjee.

Eleven witnesses§ were examined. They one and all came with the same story, but on cross-examination their evidence was found to vary so much, as that no reliance whatever could be placed on its truth, they were unsuccessful in proving *alibi*.

Prisoner No. 7, in defence denies the crime, and states, 1st that the darogah of Kissennugur

has an ill-feeling against him and has tutored the prisoners Nos. 3 and 4, to implicate him, and in like manner instructed the other witnesses; denies his having been at mouzah Patea on the 24th Chyte; that on the 15th or 16th of that month he went to Cutwa, and returned to his own house at mouzah Bool-

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koora, five *cos*s distant from Patea, on the 24th at about noon, remained there the whole day and night. That the property (No. 1, *thalee*) is his property, that it was placed in the upper part of his house for safety with other things. He purchased the *thalee* eleven or twelve years ago, at Poorundapore bazar.

He calls thirty-one witnesses to prove this statement; fourteen witnesses* were examined as to

- * No. 38, Bykunt Gungoollee.
- 39, Gopeebullubh Banerjea.
- 40, Magaram Kundu.
- 41, Nirun Bagdee.
- 42, Madhub Thakoor.
- 43, Bhugoban Banerjea.
- 44, Essoree Bhutacharjea.
- 45, Bacharam Roy.
- 46, Bacharam Mookerjea.
- 47, Sukteekant Mundul.
- 48, Panchcowree Kundu.
- 49, Kunae Kundu.
- 65, Ramdyal Roy.
- 66, Gunesh Dass.

the *alibi*, the recognising the property as prisoner's and to his good character. The unexamined witnesses were called to prove his character as being good. The testimony to prove the *alibi* is considered untrustworthy. Though each witness stated to his having seen the prisoner at the village of Boolkoora on the 24th instant, both in the day time and night, nevertheless in their cross-examination they

broke down, and from the whole tenor of their statement they seem to have been well tutored before coming into court. Those called to prove the *thalee* as prisoner's, and gave evidence before the magistrate, if their evidence is to be relied on, have proved it so, but those examined only before this court, on this point, have totally failed. To test these witnesses' evidence a *thalee* was shewn them taken out of the *malikhanah*, which on examining thoroughly they declared the property of the prisoner, and afterwards denied any knowledge of the stolen one, which was also shewn to them.

After giving my serious attention to the proofs adduced for the prosecution, to the defence made by the several prisoners and to the whole circumstances of the case, I am of opinion that they one and all are guilty of the crime charged against them. I consider that the three prisoners Ram Chunder Ghose, Sreeram Mundul and Prankisto Nundee were the leaders of the gang, and that the other two were engaged for the occasion; that the circumstance of the case is greatly aggravated by the

† No. 1, Dassee Tilin.

cruel act of Prankisto in burning the woman Dassee† on the parts of the body as shewn in the evidence. The dacoits being armed with swords, and three of them, prisoners Nos. 5, 6 and 7, discharged police burkundazes, adds considerably to the crime. Under the impression that they one and all are part of a professional gang and that this is not their first expedition of a similar kind, I would recommend they be transported beyond the seas for fifteen years with labor and irons.

Resolution of the Presidency Court of Nizamut Adawlut.— 1854.
(Present: Messrs. H. T. Raikes, and B. J. Colvin.) No. 546,
dated 9th June, 1854.

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Case of
MANICK alias
SOOJUN BAO-
REE DAGGEE
and others.

The Court, having perused the proceedings connected with the case of Manick alias Soojun Baoree Daggee, and others, observe that the sentence proposed by the officiating sessions judge, is contrary to Section 8, Regulation LIII. of 1803, as transportation can only be passed upon life-convicts. He has himself the power to sentence the prisoners to sixteen years' imprisonment, including two years in lieu of stripes, with hard labor and irons in banishment. He will therefore pass his own sentence, as the term of imprisonment proposed by him is within his power.

